

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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ESTATE OF RUTH FREIWALD, by personal representative, CHARLES FREIWALD, NATHAN RANDALL FETT, MELES LEE TEKLAY FETT, ZAFU ANN TEKLAY FETT, KALKIDAN MARIE SOLOMON FETT, MATTHEW JOHN FETT, SEYAYE ELLEN TEKLAY FETT, NATINAEL EARL SOLOMON FETT, BRANDON CHARLES FETT,

Plaintiffs,

and

DEAN HEALTH PLAN, INC.,  
PROGRESSIVE CASUALTY INSURANCE COMPANY,

Involuntary Plaintiffs,

-vs-

Case No. 18-CV-896

ADEYEMI FATOKI, M.D.; D. PETERS;  
JESSICA JONES, R.N.; EMILY BLOZINSKI,  
L.P.N.; CORRECT CARE SOLUTIONS, LLC;  
JOHN R. GOSSAGE, BROWN COUNTY,

Defendants.

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Video Examination of THOMAS D.

FOWLKES, M.D., taken at the instance of the Plaintiffs, under and pursuant to the Federal Rules of Civil Procedure, before Sarah A. Hart, RPR, RMR, CRR, and Notary Public in and for the State of Wisconsin, at Gutglass, Erickson, Larson, & Schneider, S.C., 735 North Water Street, Suite 1400, Milwaukee, Wisconsin, on January 22, 2019, commencing at 9:38 a.m. and concluding at 3:42 p.m.

**EXHIBIT**  
**58**

1 APP E A R A N C E S  
 2  
 3 LAWTON & CATES, S.C., by  
 4 MR. DIXON GAHNZ  
 5 345 West Washington Avenue, Suite 201  
 6 P.O. Box 2965  
 7 Madison, Wisconsin 53701  
 8 appeared on behalf of Plaintiffs.  
 9  
 10 GUTGLASS, ERICKSON, LARSON, & SCHNEIDER, S.C., by  
 11 MS. MARIA K. SCHNEIDER  
 12 735 North Water Street, Suite 1400  
 13 Milwaukee, Wisconsin 53202  
 14 appeared on behalf of Defendant  
 15 Adeyemi Fatoki, M.D.  
 16  
 17 HEYL, ROYSTER, VOELKER & ALLEN, P.C., by  
 18 MR. SCOTT G. SALEM  
 19 120 West State Street, 2nd Floor  
 20 Rockford, Illinois 61101  
 21 appeared on behalf of Defendants  
 22 Correct Care Solutions, LLC, Emily J.  
 23 Blozinski, L.P.N., and Jessica Jones, R.N.  
 24  
 25 CRIVELLO CARLSON, S.C., by  
 1 MS. AMY J. DOYLE  
 2 710 North Plankinton Avenue, Suite 500  
 3 Milwaukee, Wisconsin 53203  
 4 appeared on behalf of Defendants  
 5 D. Peters, John R. Gossage, and Brown County.  
 6  
 7 \* \* \* \* \*  
 8 A L S O P R E S E N T  
 9 Ms. Stephanie Olson, videographer  
 10 Mr. Stuart Langdon, by telephone

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8	Exhibit 204 - Report prepared by Dr. Fowlkes 63
9	Exhibit 205 - Supplemental report prepared by 63 Dr. Fowlkes
10	Exhibit 206 - CIWA Assessment Scale for 111 Benzodiazepines
11	Exhibit 207 - PowerPoint presentation - 147 "Benzodiazepines: An Update"
12	Exhibit 208 - Article - "Prescribing and 160 Tapering Benzodiazepines"
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20	Disposition of Original Exhibits:
21	Exhibits 204 through 209, copy of Exhibit 203
22	Attached to Original Transcript.
23	
24	Original Exhibit 203 was retained by Attorney
25	Schneider.

1 TRANSCRIPT OF PROCEEDINGS  
 2 (Exhibit No. 203 was marked.)  
 3 THE VIDEOGRAPHER: We are officially  
 4 on the record at 9:38 a.m. Today's date is  
 5 January 22nd, 2020. This is disc number one of  
 6 the deposition of Dr. Thomas Fowlkes.  
 7 This deposition is being taken in  
 8 the matter of the Estate of Ruth Freiwald  
 9 versus Fatoki, M.D. This matter is pending in  
 10 the United States District Court in the Eastern  
 11 District of Wisconsin and is case number  
 12 18-CV-896.  
 13 This deposition is taking place at  
 14 Gutglass, Erickson, Larson & Schneider, S.C.,  
 15 located at 735 Water Street, Suite 1400,  
 16 Milwaukee, Wisconsin, 53214.  
 17 My name is Stephanie Olson,  
 18 videographer. The court reporter is Sarah  
 19 Hart. Will counsel please state their  
 20 appearances and whom they represent, beginning  
 21 with plaintiffs' counsel, and then the reporter  
 22 will swear in the witness.  
 23 MR. GAHNZ: Good morning. Dixon  
 24 Gahnz on behalf of the plaintiffs.  
 25 MS. SCHNEIDER: Attorney Maria

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1 Schneider on behalf of Dr. Fatoki.  
 2 MR. SALEM: Scott Salemi. I  
 3 represent defendants, Nurse Blozinski and Jones  
 4 and Correct Care Solutions.  
 5 MS. DOYLE: Attorney Amy Doyle on  
 6 behalf of Brown County, Sheriff Gossage, and  
 7 Officer Peters.  
 8 THOMAS D. FOWLKES, M.D., called as a  
 9 witness herein, having been first duly sworn on  
 10 oath, was examined and testified as follows:  
 11 EXAMINATION  
 12 BY MR. GAHNZ:  
 13 Q Good morning, Doctor. My name is Dixon Gahnz.  
 14 We met briefly off the record. I represent --  
 15 one of the attorneys representing the  
 16 plaintiffs in this matter.  
 17 You've been through this process  
 18 before; is that correct?  
 19 A I have.  
 20 Q The only thing that I'll remind you of is if  
 21 you don't understand a question that I've  
 22 asked, please ask me to rephrase it, repeat it,  
 23 and only answer those questions you understand.  
 24 Fair enough?  
 25 A I'll do.

	Page 6	Page 7	
1 Q	All right. Prior to going on the record, you handed me two binders of materials; is that correct?	1 Q	And is this up to date?
4 A	<b>That is correct.</b>	2 A	<b>It is up to date as of the submission of my supplemental report in the last couple of weeks.</b>
5 Q	And these are the materials that you've brought with you from your file today?	5 Q	All right. There's the notice of deposition?
7 A	<b>That's correct.</b>	6 A	<b>That's correct.</b>
8 Q	This is not your entire file, correct?	7 Q	There is a calendar for October and November of '16; is that correct?
9 A	<b>That's correct -- it's not all the documents I was provided.</b>	9 A	<b>That's correct.</b>
10 Q	Okay. So why did you choose to bring the two binders?	10 Q	Your Rule 26 report?
13 A	<b>They were items which I either felt I might need to refer to today or in the case of some of the expert reports that I hadn't read prior to getting on the airplane so I wanted to be able to read them.</b>	11 A	<b>That's correct.</b>
18 Q	Okay. All right.	12 Q	Your supplemental report?
19	So we've marked one of the binders as Exhibit 203, and I just want to go through briefly with you what's in that. And then I'm going to give it back to you, okay?	13 A	<b>That's correct.</b>
23	There's a -- a handwritten billing statement, correct?	14 Q	You've got it marked as complaint, but it's the second amended complaint?
25 A	<b>That's correct.</b>	16 A	<b>That's right. The operative complaint to my understanding.</b>
1	that you've got several CCS procedures, correct?	18 Q	CCS records?
3 A	<b>I'll take your word for it. I believe I have maybe two policies in there, two --</b>	19 A	<b>That's correct.</b>
5 Q	All right. You have the Medication Verification Policy which starts with CCS59, and you also have the No Missed Medication Policy; is that correct?	20 Q	Other records which would include the Huber preregistration, the Brown County Nicolet discharge summary?
9 A	<b>That's correct.</b>	23 A	<b>That's correct.</b>
10 Q	All right. Then the next thing is you've got the references. Are these the articles that are cited to in your report?	24 Q	The next item that you've got in this binder is marked Policies and Procedures. And within
13 A	<b>That's correct.</b>	25	
14 Q	All right. And there are six articles that you cited, and there's complete copies of those in the -- in the file --	Page 8	
17 A	<b>That's correct.</b>	1 A	<b>Correct.</b>
18 Q	-- in this binder? All right.	2 Q	Mr. Stanley and Mr. Stanley's supplemental?
19	The second binder I did not mark because it's things that everybody should have, but if you want it marked, we'll go ahead.	3 A	<b>Correct.</b>
22	So the first item that you've got is the plaintiff expert reports, which includes Dr. Greist and Dr. Greist's supplemental, correct?	4 Q	Nurse Ward and Nurse Ward's supplemental?
25		5 A	<b>Correct.</b>
		6 Q	All right. Then the next set of documents are -- is noted Other Defense Experts, which you have a report of Dr. Joshua, Dr. Daniel, Nurse Pearson; is that correct?
		10 A	<b>That's correct.</b>
		11 Q	And then you have a tab noted Co. Defense Experts.
		13 A	<b>I --</b>
		14 Q	And then --
		15 A	<b>I believe that's short for County.</b>
		16 Q	I'm sorry.
		17 A	<b>County Defense Experts.</b>
		18 Q	Fair enough.
		19	And then under that tab you have Hayes, Carter, and Robbins; is that correct?
		21 A	<b>That's correct.</b>
		22 Q	And within the -- did you also include the supplemental reports of each of these witnesses if there is a supplemental?
		25 A	<b>I will tell you that to the best of my</b>

	Page 10		Page 11
1	knowledge, no -- or to the best of my	1	those documents that I had disclosed in my
2	knowledge, there was only one report of each	2	report.
3	one of them.	3	Q Okay. Anything else?
4	Q Okay.	4	A No. I mean, I don't know -- I don't exactly
5	<b>A I can't tell you with 100 percent certainty was</b>	5	know what you mean. I reviewed the documents
6	<b>that the supplemental -- I believe it was the</b>	6	that -- the expert disclosure, the documents
7	<b>original report, so I believe I do not have</b>	7	that were in there, and that included some
8	<b>supplements.</b>	8	things such as review -- I've reviewed the
9	Q All right.	9	<b>NCCHC Guidelines for Jail Standards.</b>
10	<b>A I can spend time trying to make certain that</b>	10	Q Okay.
11	<b>it's not the supplementals if you would like.</b>	11	<b>A And any -- and potentially articles that were</b>
12	Q No. We have things to do.	12	<b>disclosed by other experts.</b>
13	<b>A Okay.</b>	13	Q And these are things that you did in
14	Q All right. What did you do to prepare for your	14	preparation for your testimony today?
15	testimony today?	15	<b>A Well, I prepared a supplemental report a couple</b>
16	<b>A In general, I reviewed these documents that I</b>	16	<b>of weeks ago, so some of that preparation was</b>
17	<b>have with me and the other documents that were</b>	17	<b>done during that time.</b>
18	<b>produced to me in discovery.</b>	18	Q All right. So which particular NCCHC -- NCCHC
19	Q Anything else?	19	standards did you review?
20	<b>A I traveled here and met with Attorney Schneider</b>	20	<b>A The entire policy or specifically any that were</b>
21	<b>yesterday afternoon.</b>	21	<b>addressed in any of the experts' reports.</b>
22	Q Did you meet with anybody else?	22	Q And why did you do that?
23	<b>A No.</b>	23	<b>A Because the other experts mentioned them.</b>
24	Q Did you do any independent research?	24	Q Did you review any medical records other than
25	<b>A Well, the -- well, of course, yes, I reviewed</b>	25	what's contained in Exhibit 203?
	Page 12		Page 13
1	<b>A Is your question specifically in preparation</b>	1	<b>consider that in preparation for this</b>
2	<b>for this deposition or in my entire work in</b>	2	<b>deposition for today because I remember it.</b>
3	<b>this case?</b>	3	Q Okay.
4	Q I'm just dealing right now with your work in	4	<b>A But now, as far as yesterday did I review</b>
5	this case -- or your deposition preparation.	5	<b>any -- or, you know, in the last two days have</b>
6	<b>A No.</b>	6	<b>I reviewed any policies -- other policies and</b>
7	Q Okay. Did you look at any jail records?	7	<b>procedures, no.</b>
8	<b>A No.</b>	8	<b>So I don't understand what you mean</b>
9	MS. SCHNEIDER: For all of these	9	<b>by "in preparation for this deposition today."</b>
10	questions, Dixon, you're just talking about	10	I mean, I did -- I did a good bit of work
11	depo prep?	11	preparing my Rule 26 report, preparing my
12	BY MR. GAHNZ:	12	supplemental report. All of those have
13	Q Everything is -- the umbrella is what did you	13	prepared me for my deposition today.
14	do in preparation for your deposition today.	14	Q Have you listed in your supplemental report all
15	Do you understand that?	15	of the items that you reviewed?
16	<b>A Not exactly.</b>	16	<b>A Yes.</b>
17	Q Okay. What part of that don't you understand?	17	Q Other than the literature that was contained in
18	<b>A Well, for instance, I prepared a supplemental</b>	18	Exhibit 203 and the articles that you may have
19	<b>report approximately two weeks ago.</b>	19	read referenced by other experts, did you do
20	Q Okay.	20	any additional literature review?
21	<b>A So in preparing that report I reviewed jail</b>	21	<b>A No.</b>
22	<b>records, I reviewed jail policies and</b>	22	Q Did you discuss any of the issues in this case
23	<b>procedures, I reviewed medical records,</b>	23	with any of the other experts?
24	<b>research of the other plaintiffs' experts. So</b>	24	<b>A No.</b>
25	<b>that was all done two weeks ago. I would</b>	25	Q At any time?

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1 A No.	1 that resumé to other folks?
2 Q Did you meet or discuss any of the issues in 3 this case with any other colleagues?	2 A Well, so, for instance, when it's attached to a 3 Rule 26 report, it doesn't have a watermark, 4 yes, that's correct.
4 A No.	5 Q All right. So how come it -- what difference 6 does it make whether or not you've been 7 retained or not if one wants to look at your 8 CV?
5 Q As part of your materials you have your resumé; 6 is that correct?	9 A Well, so I wouldn't want for someone to 10 download my CV and say, you know, I expect this 11 expert is going to say this when I haven't 12 even -- I didn't provided it to them. So the 13 public can download a document off of my 14 website. I don't want people to misuse it and 15 indicate that they have retained me if they 16 have not.
7 A It is attached to my Rule 26 report, yes.	17 Q All right. So with respect to the resumé that 18 was attached to the Rule 26 report, other than 19 the watermark are there any differences between 20 the May 22nd and the October 2019? Did you 21 update it?
8 Q Do you want to pull that up?	22 A I did update it. I don't recall if there are 23 any differences. If you would like me to 24 compare, I would be glad to.
9 A I have it.	25 Q No, that's all right. I think we can work off
10 Q And my copy is marked "Last updated May 22, 11 2019."	
12 Is that the most up-to-date version?	
13 A No. The one that was attached to my Rule 26 14 report and which is also my current one was 15 updated October the 8th, 2019.	
16 Q All right. Do you have a resumé that you post 17 online?	
18 A I believe that my CV is available on my 19 website, yes.	
20 Q All right. And if somebody is to copy that 21 from the online, is it going to say "Expert, 22 not retained"?	
23 A I wouldn't doubt that it would.	
24 Q Okay. And then after you've been hired, then 25 you take that watermark off and you provide	
1 of this.	Page 16
2 So let's -- the summary of your 3 qualifications it indicates that you're a 4 seasoned physician. What do you mean by a 5 seasoned physician?	1 Q Have you had -- do you have hospital privileges 2 anywhere?
6 A I have been practicing for over 20 years, and I 7 have begun to develop some gray hair.	3 A No.
8 Q It indicates that you are board-certified in 9 emergency medicine and addiction medicine; is 10 that correct?	4 Q Have you ever?
11 A That is correct.	5 A Well, in general, emergency physicians don't 6 have hospital privileges in the typical sense, 7 in other words, admitting privileges. 8 Emergency physicians typically work in an 9 emergency room and have privileges for that, 10 yes.
12 Q When was the last time that you updated those 13 certifications?	11 Q Okay. And are you currently working in any 12 emergency rooms?
14 A For the emergency medicine I believe it was 15 2010. And for addiction medicine -- I'm sorry, 16 for addiction medicine I believe it was 2010, 17 and for emergency medicine 2013, I believe.	13 A Not at this time.
18 Q Okay. Where are you licensed to practice 19 medicine?	14 Q When is the last time you worked in an 15 emergency room?
20 A The state of Mississippi.	16 A It has been approximately ten or more -- ten 17 years or so before -- since I've worked in an 18 emergency department. I've worked in urgent 19 cares since that time.
21 Q Anywhere else?	20 Q When was the last urgent care you worked at?
22 A Not at this time.	21 A I owned an urgent care for -- just a minute. I 22 owned a primary care and urgent care clinic 23 from 2009 through 2017, and presently I own a 24 different urgent care. So I own an urgent care 25 now.
23 Q Have you had your license limited in any way by 24 the state of Mississippi?	
25 A No.	

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1 Q Where are these located?	1 Q As an expert witness.	
2 A Oxford, Mississippi, and Cleveland,	2 A But -- for all years. Countless. I can't tell	
3 Mississippi.	3 you.	
4 Q Why did you stop -- what happened to the urgent	4 Q Okay.	
5 care center that you owned between 2009 and	5 A But most of them were not -- not as a paid	
6 2017?	6 expert witness. Most of them were for other	
7 A I turned it over to the nurse -- to nurse	7 purposes. As an expert witness, but...	
8 practitioners who were working with me there.	8 Q As a retained expert how many times have you	
9 Q And when did you open the new urgent care	9 testified at trial?	
10 center?	10 A I can't give you an exact number, but I would	
11 A 2019.	11 say between five and ten probably.	
12 Q How come?	12 Q It indicates -- you indicate that you're an	
13 A Because that town needed an urgent care center,	13 accomplished expert witness.	
14 and I was approached and I'm one of the	14 What does that mean?	
15 co-owners of it.	15 A I take my work seriously and I have been	
16 Q The next paragraph starts with "Accomplished	16 retained in a number of cases.	
17 expert witness with more than ten years'	17 Q Okay. I mean, have you been recognized by any	
18 experience at both deposition and trial in	18 agency, any accrediting body, any awards as	
19 state and federal courts."	19 having the specific distinction as an expert?	
20 How many cases have you testified in	20 A Not that I'm aware of.	
21 court on?	21 Q All right. You list your areas of expertise;	
22 A My -- my federal case list is attached, so...	22 is that right?	
23 Q Okay. But the question was, how many times	23 A That's correct.	
24 have you testified in court?	24 Q And does this -- I have correctional health	
25 A In my career?	25 care, deaths in custody, drug abuse and effects	
	Page 20	Page 21
1 of addiction, drug testing interpretation and	1 July of '17 to June of 2020.	
2 effects of substances, urgent care, and	2 What is a certified correctional	
3 emergency medicine. Is that list that you	3 health care professional?	
4 provided accurate today?	4 A I would point out that it also has a dash	
5 A It is.	5 physician. So there -- which is different.	
6 Q Okay.	6 Certified correctional health care professional	
7 A I mean, those are not necessarily all my areas	7 is a level of certification that is issued by	
8 of expertise, but...	8 the National Commission On Correctional	
9 Q Well, how come you left certain areas off your	9 Healthcare. And one can demonstrate knowledge	
10 resumé?	10 in and experience with the standards -- NCCHC	
11 A Because I don't -- in other words, this is the	11 standards there and can take a test and can	
12 kind -- this is the type of work -- type of	12 become a certified correctional health care	
13 cases that I take.	13 professional, in other words, demonstrating	
14 Q Do you take type -- other types of work that	14 knowledge and expertise on those standards.	
15 aren't listed on the --	15 Q Okay.	
16 A No. That's what I'm saying. I limit my expert	16 A You can become just a plain -- a CCHP without	
17 witness work to this.	17 any dash, or you can take advanced-level	
18 Q Okay.	18 certifications which have additional knowledge	
19 A I was saying I may have expertise in other	19 requirements. And so the physician one is the	
20 areas, but I don't hold myself out as an	20 one that is the most advanced for physicians to	
21 expert. I'm not looking for those type of	21 take. So it would be in addition to the	
22 cases.	22 standards knowledge of treating conditions that	
23 Q Okay. It indicates that you're a certified	23 are common in a jail setting, mental health,	
24 correctional health care professional. And	24 infectious disease, public health, those type	
25 that certification was July 17th to June --	25 of things.	

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1 Q Okay.  
 2 A There -- it's the closest thing that there is  
 3 to a board certification in correctional health  
 4 care.  
 5 Q All right. Your professional experience, the  
 6 first thing that you have listed is that you  
 7 were a medical director at Lafayette County,  
 8 Mississippi, Detention Center.  
 9 Is that a jail?  
 10 A It is.  
 11 Q All right. It indicates that it has local and  
 12 federal detainees?  
 13 A Correct.  
 14 Q Does that mean that it has people only that  
 15 have not been sentenced, or does it got people  
 16 that have been detained and are serving  
 17 sentences?  
 18 A So jails in general -- it does have people who  
 19 were sentenced.  
 20 Q Okay.  
 21 A In general, county jails mainly hold pretrial  
 22 detainees; they may also hold convicted persons  
 23 who are serving short sentences, you know, 30,  
 24 45 days, up to a year. Normally if you've been  
 25 convicted of a felony and are serving more than

Page 24

1 working as an independent contractor; is that  
 2 correct?  
 3 A Yes. My practice was an independent  
 4 contractor. So, in other words, I provided the  
 5 nurses, the pharmaceutical services, radiology  
 6 services, lab services. They were all provided  
 7 by me, and I was paid a per capita rate, in  
 8 other words, an all-inclusive rate to provide  
 9 those services.  
 10 Q So between '98 and 2015 your role at the -- as  
 11 the medical director at Lafayette County would  
 12 be similar to the CCS role in Brown County in  
 13 this case?  
 14 A That is correct.  
 15 Q Okay. How many nurses did you employ?  
 16 A I had one full-time -- I have now and have for  
 17 a long time had one full-time and two part-time  
 18 nurse positions. My two part-time positions  
 19 are occupied by one person, so I guess  
 20 technically I employ two nurses, but I have  
 21 three positions.  
 22 Q Other than you --  
 23 A I --  
 24 Q I'm sorry.  
 25 A I also have a nurse practitioner. I'm sorry, I

1 one year, you're remanded to the state  
 2 Department of Corrections and you would not be  
 3 held in the jail typically.  
 4 Q And are you speaking of Mississippi, Wisconsin,  
 5 nationwide?  
 6 A That's pretty much a nationwide -- pretty much  
 7 a nationwide practice.  
 8 In addition, the federal detainees  
 9 that I have, the process is slow. And so I may  
 10 keep federal detainees for up to a year after  
 11 they have been sentenced to the Bureau of  
 12 Prisons -- before they're transferred to the  
 13 Bureau of Prisons.  
 14 Q So your job as the medical director at the  
 15 Lafayette County Detention Center, what does  
 16 that include?  
 17 A That includes the provision of health care to  
 18 the patients under my care. That includes  
 19 supervising the other health care employees who  
 20 work there. That includes interacting with the  
 21 administration on, you know, matters that are  
 22 important to the administration, policies,  
 23 procedures, et cetera. It involves training of  
 24 both the nursing staff and the security staff.  
 25 Q It indicates here that from '98 to '15 you were

Page 25

1 wasn't counting them amongst the nurses. I was  
 2 counting the nurse practitioner as a provider,  
 3 but...  
 4 Q All right. So there's you, a nurse  
 5 practitioner, two nurses. Any other health  
 6 care staff that you employed between '98 and  
 7 '15?  
 8 A Yes. A paramedic between those years.  
 9 Q I'm sorry, a paramedic?  
 10 A A paramedic does not work for me now but did in  
 11 those years.  
 12 Q Did he work for you at the Lafayette County  
 13 Detention Center?  
 14 A Correct.  
 15 Q Currently you're an employee of Lafayette  
 16 County, Mississippi?  
 17 A That is correct.  
 18 Q And your job title is a medical director?  
 19 A That is correct.  
 20 Q Have your job duties changed since you became  
 21 an employee?  
 22 A In general I would say no. Obviously, I don't  
 23 directly provide the pharmacy services now; the  
 24 County contracts with somebody. So I oversee  
 25 those. It's the same job that we did before,

<p>1    in other words, but rather than me being the  2    one that awards the pharmacy contract, for  3    instance, now that's a County function and I  4    just oversee it.</p> <p>5    Q    Okay. So in your role as the medical director  6    at Lafayette County, have there been inmate  7    lawsuits against you?</p> <p>8    A    No.</p> <p>9    Q    Against the County?</p> <p>10   A    <b>I am aware of one lawsuit against the County in  11   my 20 years, which was not a medical lawsuit.</b></p> <p>12   Q    What about either of the nurses or the nurse  13   practitioner?</p> <p>14   A    No.</p> <p>15   Q    So do you consider it a conflict of interest to  16   work as a medical director at a jail and  17   provide expert opinions as to the standards  18   related to health services at a jail?</p> <p>19   A    <b>Absolutely not.</b></p> <p>20   Q    Okay. Do you take into account -- the fact  21   that you're testifying in the depositions and  22   your report may be available to the public, do  23   you take that into account as how it may impact  24   the provision of services and the -- in a  25   lawsuit that could be brought against you as</p>	<p>Page 26</p> <p>1    the director of the Lafayette County Medical --  2    Lafayette County Detention Center?</p> <p>3    MS. SCHNEIDER: Object to the form.  4    Go ahead.</p> <p>5    <b>THE WITNESS: I'm not sure that I  6   even understand what you're trying to ask. I  7   guess you're asking if I -- if I understand you  8   correct, you're asking do I -- do I take it  9   into account or change my -- I take that to  10   mean do I change my opinions as a result of  11   that. And no, I do not. My opinions are what  12   they are and they're available to who they are,  13   so I don't know of any effects that they do or  14   don't have, but I'm not concerned about that if  15   that's what you're asking. That does not play  16   into my formation of opinions.</b></p> <p>17   BY MR. GAHNZ:</p> <p>18   Q    You also list here that you're a prisoner  19   advocate member of the Institutional Review  20   Board, Division of Research, Integrity, and  21   Compliance at the University of Mississippi.  22   And that was from 2007 to present. What is  23   that?</p> <p>24   A    <b>That is correct. The University of  25   Mississippi, like any institution which</b></p>
<p>1    receives federal money for research, must have  2    an institutional review board that reviews and  3    approves research involving human subjects.  4    And if any of that research is going to involve  5    inmates or prisoners, then there is special  6    federal requirements that someone be appointed  7    who has special knowledge of inmates and so can  8    look out for their interests as it relates to  9    research projects that involve them. And that  10   is a volunteer role I have done for the last 13  11   years.</p> <p>12   Q    So if someone at the University of Mississippi  13   wants to do research on jail inmates, that's  14   what we're talking about?</p> <p>15   A    <b>Not just jail inmates, but prisoner -- any kind  16   of prisoners anywhere.</b></p> <p>17   Q    And your job is to advocate for the prisoners  18   such that any research is done appropriately?</p> <p>19   A    <b>That's correct.</b></p> <p>20   Q    Anything else?</p> <p>21   A    <b>No. That's the -- I mean, that's the gist of  22   the role -- of my role.</b></p> <p>23   Q    All right. You also -- what is the name of the  24   urgent care center that you currently own? Is  25   that listed on your resumé?</p>	<p>Page 28</p> <p>1    <b>It is. At least it's listed on the one that  2   was with my Rule 26 report. Express Care of  3   Mississippi.</b></p> <p>4    Q    All right. So you're a co-owner and physician  5    at Right Track Medical Group, an outpatient  6    provider of mental health services in northern  7    Mississippi, correct?</p> <p>8    A    <b>That is correct.</b></p> <p>9    Q    And you've been doing that since 2018?</p> <p>10   A    <b>That is correct.</b></p> <p>11   Q    What is your role at Right Track Medical Group?</p> <p>12   A    <b>It is primarily an administrative role at this  13   time.</b></p> <p>14   Q    Meaning?</p> <p>15   A    <b>Meaning I'm the CFO.</b></p> <p>16   Q    Okay. Do you see any patients there?</p> <p>17   A    <b>At this time I do not.</b></p> <p>18   Q    Have you ever?</p> <p>19   A    <b>No.</b></p> <p>20   Q    Okay.</p> <p>21   A    <b>The reason I'm saying that is right now we  22   don't provide addiction services, substance  23   abuse services. We probably will in the  24   future, and I will -- I will likely see  25   substance abuse patients at that practice, but</b></p>

<p>1    <b>I am not at this time.</b></p> <p>2    Q    Okay. The next page indicates that you're the 3    sole shareholder of Thomas Fowlkes, M.D., P.A., 4    a contractor of emergency physician services to 5    acute care facilities and emergency 6    medicine/EMS consultant. 7        What is that?</p> <p>8    A    <b>So P.A. standards for professional association.</b> 9    <b>So it's just the corporation that a physician</b> 10    <b>has. It's been in existence since 1992. When</b> 11    <b>I have done work in urgent cares or emergency</b> 12    <b>departments, it is usually as an independent</b> 13    <b>contractor through that corporation. That was</b> 14    <b>the corporation that provided health care</b> 15    <b>services to the jail for those 17 years. And</b> 16    <b>now it's the corporation that I do consultation</b> 17    <b>and expert witness work through.</b></p> <p>18    Q    Okay. You are also a co-owner and chief 19    medical officer of the Oxford Center between 20    2011, 2015; is that correct?</p> <p>21    A    <b>That is correct.</b></p> <p>22    Q    What is the Oxford Center?</p> <p>23    A    <b>A comprehensive substance abuse treatment</b> 24    <b>facility. So we had detox services,</b> 25    <b>residential rehabilitation, intensive</b></p>	<p>Page 30</p> <p>1    <b>outpatient, and all levels of substance abuse</b> 2    <b>treatment.</b></p> <p>3    Q    There's an acronym CARF. What is that?</p> <p>4    A    <b>That is an accrediting organization which</b> 5    <b>accredits rehab facilities. I believe it</b> 6    <b>stands for the Commission an Accreditation of</b> 7    <b>Rehab Facilities. Don't hold me to those</b> 8    <b>letters, but I believe that's correct.</b></p> <p>9    Q    What type of detox did you -- were you involved 10    with at the Oxford Center?</p> <p>11    A    <b>Well, all types of detox. It is not a -- it is</b> 12    <b>not and was not a licensed hospital. So, in</b> 13    <b>other words, if a person required detox</b> 14    <b>services, they could only be provided in, say,</b> 15    <b>a hospital or intensive care unit setting. We</b> 16    <b>did not provide those. But it is what is</b> 17    <b>called residential detox from opiates, alcohol,</b> 18    <b>benzodiazepines.</b></p> <p>19    Q    I don't understand that answer. So it says 20    it's a 76-bed CARF accredited detox residential 21    and outpatient substance abuse treatment 22    facility.</p> <p>23        What is the difference between the 24    services that you provided as far as detox as 25    the co-owner of the Oxford Center and those</p>
<p>Page 32</p> <p>1    services that would be provided by a hospital?</p> <p>2    A    <b>So an example would be that a person who is</b> 3    <b>having alcohol detox in most cases can be</b> 4    <b>treated within a residential detox facility</b> 5    <b>such as we had. But if, for instance, they</b> 6    <b>became delirious and required to be on a</b> 7    <b>ventilator, for instance, we -- or required</b> 8    <b>intensive care unit level of services,</b> 9    <b>intravenous, medications, we do not provide</b> 10    <b>those. We would send the person to an acute</b> 11    <b>care medical hospital.</b></p> <p>12    Q    Okay. Were there types of detox if a person 13    came to you and was detoxing off of a 14    particular substance that you would not take 15    that person, that they would be sent 16    immediately to the hospital?</p> <p>17    A    <b>No.</b></p> <p>18    Q    So it was the -- the determining factor as to 19    whether somebody was sent to the hospital was 20    the level of symptoms that the person was 21    exhibiting?</p> <p>22    A    <b>Well, our ability to take care of them. In</b> 23    <b>other words, if we were able to manage their</b> 24    <b>detox with -- with the treatment services we</b> 25    <b>were able to provide, then we would do that.</b></p>	<p>Page 33</p> <p>1    <b>If they required a higher level of care such as</b> 2    <b>cardiac monitoring or some other level of care</b> 3    <b>that we couldn't provide, we would send them to</b> 4    <b>a hospital.</b></p> <p>5    Q    So I'm trying to figure out how that's any 6    different than what I just said. I mean, we're 7    going to be here for quite a while today. And 8    if we can't agree on basic terms, then it seems 9    like we're going to --</p> <p>10    So when I said the determiner as to 11    whether somebody is sent to the hospital or not 12    is based on the symptoms or the severity of the 13    symptoms, what is your disagreement with that 14    statement?</p> <p>15    I just want to make sure that we can 16    get on the same page so we can get done before 17    4:30.</p> <p>18    A    <b>Well, patients --</b></p> <p>19        MS. SCHNEIDER: Argumentative. But 20    go ahead.</p> <p>21        <b>THE WITNESS: Patients can have</b> 22        <b>severe symptoms and yet not require high level</b> 23        <b>of medical intervention. On the other hand,</b> 24        <b>patients can be completely asymptomatic and not</b> 25        <b>be breathing and need a very high level of</b></p>

Page 34	Page 35
1 care. So it's not based upon their level of 2 symptoms but upon their level of care which 3 they require. That's the difference. 4 BY MR. GAHNZ:	1 education; is that correct? 2 A <b>That's correct.</b> 3 Q So you started out at the University of the 4 South in Tennessee; is that right?
5 Q So in -- is it your position that a patient 6 that's not breathing is -- that's a mild 7 symptom?	5 A <b>That's correct.</b> 6 Q And did you get -- that was a community -- was 7 that a two-year school?
8 A <b>That's --</b> 9 MS. SCHNEIDER: Object to form. 10 THE WITNESS: That's exactly not 11 what I -- that's what I just did not say. 12 I said that a person cannot have 13 symptoms --	8 A <b>No.</b> 9 Q What was that? 10 A <b>It is a liberal arts four-year college.</b> 11 Q All right. Did you graduate from there? 12 A <b>I did not.</b> 13 Q All right. Then what did you do between 14 '82 and '85?
14 BY MR. GAHNZ: 15 Q And not be breathing. 16 A <b>Symptoms or complaints. So that might be a</b> 17 <b>sign, that they weren't breathing and need to</b> 18 <b>go to the hospital. My point is that -- or the</b> 19 <b>reason -- the difference is that it's not what</b> 20 <b>the person's complaint is but what level of</b> 21 <b>service I'm able to provide for them. So those</b> 22 <b>are different things.</b>	15 A <b>I went to school at Rhodes College in Memphis,</b> 16 <b>Tennessee.</b> 17 Q Okay. And at that point you got a degree in 18 psychobiology; is that right? 19 A <b>That is correct.</b> 20 Q Then you went to medical school in Tennessee; 21 is that right? 22 A <b>That is correct.</b>
23 I'm doing my best to answer your 24 questions. 25 Q The next section of your resumé is your	23 Q And then from there you went to the University 24 of Pittsburgh for a residency in emergency medicine; is that right?
Page 36	Page 37
1 A <b>That is correct.</b> 2 Q Is that the sum total of your education after 3 high school? 4 A <b>To the best that I understand your question,</b> 5 yes. 6 Q Well, did you go somewhere and get your MBA? 7 A <b>No.</b> 8 Q Okay. Did you go somewhere and get an 9 engineering degree? 10 A <b>No. But I'm quite certain that I -- during</b> 11 <b>medical school I went to -- did electives in</b> 12 <b>other places; same with the University of</b> 13 <b>Pittsburgh. So, I mean, it's a fair</b> 14 <b>representation of a summary of my -- it may not</b> 15 <b>list every course that I took or every -- every</b> 16 <b>elective that I engaged in, but yes.</b>	1 Q As a correctional officer. 2 A <b>I have taught correctional officer training</b> 3 <b>courses. I am not a certified correctional</b> 4 <b>officer, but I teach those certification</b> 5 <b>courses. I instruct.</b> 6 Q You teach the medical aspect of it, correct? 7 A <b>That is correct.</b> 8 Q What education do you have with respect to the 9 formulation of jail policy? 10 A <b>What education? I have 20 years' experience.</b> 11 <b>I don't -- I'm not aware of any formal</b> 12 <b>education that one can obtain -- achieve for</b> 13 <b>that.</b>
17 Q Does it accurately list all of the degrees that 18 you hold? 19 A <b>It does.</b> 20 Q All right. Where did you go to nursing school? 21 A <b>I did not go to nursing school.</b> 22 Q Where did you get your L.P.N. license? 23 A <b>I do not have an L.P.N. license.</b> 24 Q Where did you go for correctional training? 25 A <b>For correctional training?</b>	14 Q Do you have any degrees related to correctional 15 sciences? 16 A <b>Say that again.</b> 17 Q Have you attended a police academy? 18 A <b>I have not.</b> 19 Q Have you attended a correctional officer 20 seminar? 21 A <b>I have.</b> 22 Q Related to what? 23 A <b>Correctional officer training.</b> 24 Q In what area? 25 A <b>Basic detention officer training.</b>

<p>1 Q Describe that for me.</p> <p>2 A <b>The State of Mississippi has a -- I believe it's an 80-hour training course. I have taught several modules of that and attended several other modules that I didn't teach.</b></p> <p>6 Q Okay. What modules did you teach?</p> <p>7 A <b>The ones as it relates to medical services within a jail, health services within a jail, mental health services within a jail, suicide prevention. I believe -- I'm not certain about -- I helped teach a portion on chemical use of restraint -- or the use of force, a module on chemical -- chemicals in decontamination.</b></p> <p>15 Q What courses -- what modules did you attend?</p> <p>16 A <b>I don't recall the specifics.</b></p> <p>17 Q In the areas of expertise that you include on page 1 you don't hold yourself out as a jail policy expert, correct?</p> <p>20 A <b>I disagree.</b></p> <p>21 Q You are a jail policy expert?</p> <p>22 A <b>As it relates to correctional health care, yes.</b></p> <p>23 Q Okay. So you're a medical expert, a jail policy expert, a nursing expert, and a licensed practical nurse expert. Is that accurate?</p>	Page 38	<p>1 A <b>That's your characterization, not mine.</b></p> <p>2 Q Well, are you offering opinions in all four of those disciplines here today as an expert opinion -- as an expert retained?</p> <p>5 A <b>No. I am offering opinions on correctional health care. That may include the actions of physicians, other health care providers, nurses, and correctional officers as it relates to the delivery of the -- assessment and delivery of emergency care to inmates. And obviously of necessity, those also involve policies and procedures relating to each one of those.</b></p> <p>14 Q All right. So you've offered opinions that are critical of Nurse Ward, correct?</p> <p>16 A <b>I'm sorry, of?</b></p> <p>17 Q You've offered opinions in this case that are critical of Nurse Ward, correct?</p> <p>19 MS. SCHNEIDER: Object to the form of that question.</p> <p>21 <b>THE WITNESS: No.</b></p> <p>22 BY MR. GAHNZ:</p> <p>23 Q You agree with the assessment that Nurse Ward has provided in her reports?</p> <p>25 A <b>No, I -- I disagree with a number of her</b></p>
<p>1 <b>opinions.</b></p> <p>2 Q Okay. How is that different than being critical of her?</p> <p>4 A <b>I thought you -- because -- I thought you were talking about a defendant in this case, and then I realized you're talking about an expert. So I don't believe she breached the standard of care. There's not -- I'm not critical of her actions; I'm only disagreeing with her report and her opinions. So I agree -- might agree with some, might disagree with some. I just stated my agreements and disagreements.</b></p> <p>13 Q One of the defendants in this case is an L.P.N., correct?</p> <p>15 A <b>That's correct.</b></p> <p>16 Q And you've offered opinions that the L.P.N. acted within the standard of care?</p> <p>18 A <b>That was not amongst the scope of what I was asked to look at, but yes, that is my opinion.</b></p> <p>20 Q All right. So when we get to trial in this case, is anybody going to -- if anybody asks you those questions, are you going to answer them with respect to the standard of care that an L.P.N. should be held to in this case?</p> <p>25 A <b>If I am asked --</b></p>	Page 40	<p>1 MR. SALEMI: Hold on. Hold on. I object to form. You just asked him and he just said she did comply with the standard of care.</p> <p>4 So I object to form. He can be --</p> <p>5 BY MR. GAHNZ:</p> <p>6 Q Did you understand the question, sir?</p> <p>7 MR. SALEMI: He can be asked that question, and he will be asked that question.</p> <p>9 <b>THE WITNESS: I did understand, and</b></p> <p>10 <b>yes, I will give that opinion.</b></p> <p>11 BY MR. GAHNZ:</p> <p>12 Q All right. So my confusion is, how is it that you're not holding your -- you're going to offer expert opinions that the L.P.N. in this case met the standard of care. Isn't that the role of an expert opinion who holds himself out as an expert in L.P.N.?</p> <p>18 MS. SCHNEIDER: Object to the form.</p> <p>19 MR. SALEMI: Yeah, object to form.</p> <p>20 <b>THE WITNESS: I don't know how to</b></p> <p>21 <b>answer that question. I'm an expert in</b></p> <p>22 <b>correctional health care and all the levels --</b></p> <p>23 <b>I have hired, trained, and supervised all level</b></p> <p>24 <b>of health care professionals within a jail</b></p> <p>25 <b>setting, and I believe that I am qualified to</b></p>

Page 42		Page 43
1 <b>offer opinions about those actions.</b>		1 Q And it was a 300-some-odd page deposition?
2 BY MR. GAHNZ:		2 A <b>I remember.</b>
3 Q Have you ever worked as an L.P.N.?		3 Q All right. And do you remember being asked
4 A <b>No.</b>		4 questions with respect to staying in your lane
5 Q Have you ever worked as a registered nurse?		5 as to whether or not you could opine on the
6 A <b>No.</b>		6 L.P.N. standard of care?
7 Q Do you have --		7 A <b>I do not recall specifically. If you would</b>
8 A <b>I have supervised both.</b>		8 like to show me, I'll see if it refreshes my
9 Q Do you have the ability to report any of them		9 memory.
10 to a disciplinary board?		10 Q Well, let's just do it this way: When you gave
11 A <b>Yes.</b>		11 this deposition, you were under oath, right?
12 Q Let me break that question out.		12 A <b>I was.</b>
13 Do you have the ability to bring		13 Q And you gave the answers that were truthful to
14 charges against an L.P.N.?		14 the best of your knowledge?
15 A <b>I don't understand the question.</b>		15 A <b>I answered the questions to the best of my</b>
16 Q Well, you did when you were asked the question		16 <b>ability, yes.</b>
17 by the attorney from Benton, Arkansas, last		17 Q Well, are you saying that you weren't truthful?
18 year. Do you remember going through that		18 MS. SCHNEIDER: That misstates his
19 deposition? He was a colorful fellow.		19 testimony.
20 MS. SCHNEIDER: Argumentative. Is		20 MR. GAHNZ: Do you want to read back
21 there a question in there?		21 the question that I asked and the answer that
22 BY MR. GAHNZ:		22 he gave?
23 Q Do you remember being deposed in the case of		23 (Requested portion read.)
24 Marziale versus Correct Care Solutions?		24 BY MR. GAHNZ:
25 A <b>I do.</b>		25 Q My question: Why did you omit truthful from
Page 44		Page 45
1 your answer?		1 <b>not. I believe I may have said prior medical</b>
2 A <b>I answered your question the best that I could.</b>		2 <b>records, but I certainly ask for those. I ask</b>
3 <b>If you would like to ask me another question,</b>		3 <b>for the operative complaint.</b>
4 <b>I'll be glad to answer it.</b>		4 Q Okay.
5 Q When you're retained as an expert, does it make		5 A <b>And I ask for any other items that have been</b>
6 any difference in terms of how you formulate		6 <b>produced in discovery to that point.</b>
7 your opinions as to whether it's the		7 Q Okay.
8 plaintiff's attorney that's retained you or the		8 A <b>I formulate my initial opinions.</b>
9 defense attorney that's retained you?		9 Q I'm sorry?
10 A <b>Your question was, does it make any --</b>		10 A <b>I formulate my initial -- I review those</b>
11 <b>Would you repeat the question,</b>		11 <b>records.</b>
12 <b>please, ma'am.</b>		12 Q Okay.
13 (Last question read.)		13 A <b>I formulate my initial opinions, discuss them</b>
14 <b>THE WITNESS: No. I have a standard</b>		14 <b>with the attorney.</b>
15 <b>protocol that I use when I am reviewing cases</b>		15 Q Okay. The next part of your resumé provides
16 <b>no matter which attorney has retained me.</b>		16 publications. And it looks to me like you have
17 BY MR. GAHNZ:		17 three publications in your career; is that
18 Q Tell me that protocol, please.		18 right?
19 A <b>Well, I request the pertinent medical records;</b>		19 A <b>That would be correct.</b>
20 <b>I request any prior medical records on the</b>		20 Q Are any of these peer-reviewed?
21 <b>person in question, the plaintiff.</b>		21 A <b>The answer to that question is I don't recall.</b>
22 Q Um-hmm. Okay.		22 <b>They're a long time ago and I don't recall.</b>
23 A <b>If I am asked to opine about policies and</b>		23 Q Okay. Are you a member of any peer-reviewing
24 <b>procedures, I ask for the policies and</b>		24 committee?
25 <b>procedures. Sometimes I am, sometimes I am</b>		25 A <b>To the best --</b>

		Page 46	Page 47
1	Q Let me rephrase the question if it's a little	1 any article with respect to correctional health	
2	unclear.	2 care prior to its publication?	
3	A <b>It is.</b>	3 A <b>So I believe that's a restatement of the last</b>	
4	Q You understand -- tell me what the process of	4 <b>question. I don't believe I am on any</b>	
5	peer review is.	5 <b>journal -- I'm not presently on any journals'</b>	
6	A <b>Well, my understanding is that publications</b>	6 <b>peer-review committee if that's what you're</b>	
7	<b>which are peer-reviewed have a process and/or a</b>	7 <b>asking. I have --</b>	
8	<b>committee by which articles which are submitted</b>	8 Q Have you ever been on a journal peer-review	
9	<b>for publication are reviewed by that committee</b>	9 committee?	
10	<b>prior to -- prior to publication to ensure lack</b>	10 A <b>Not since my residency.</b>	
11	<b>of bias and scientific validity.</b>	11 Q In your residency what peer-review journal were	
12	Q Have you been on a peer-review committee?	12 you on?	
13	A <b>Not since my residency.</b>	13 A <b>I don't recall that. University of Pittsburgh</b>	
14	Q And have you written any textbook chapters?	14 <b>was just heavily involved in research, and so</b>	
15	A <b>I believe at least two of those publications</b>	15 <b>there was lots of peer review that occurred in</b>	
16	<b>are textbook chapters.</b>	16 <b>my residency.</b>	
17	Q Which two?	17 Q Have you written any articles with respect to	
18	A <b>I believe that would be the first two.</b>	18 any issue related to mental health?	
19	Q Okay. Have you written any articles with	19 A <b>I don't believe so.</b>	
20	respect to correctional health care?	20 Q Do you have any -- do you hold any degrees	
21	A <b>No.</b>	21 related to mental health?	
22	Q Have you been on any peer-review committees	22 A <b>Yes.</b>	
23	with respect to correctional health care?	23 Q What?	
24	A <b>Not to the best of my understanding.</b>	24 A <b>Well, I have a medical degree.</b>	
25	Q Okay. In any circumstance have you reviewed	25 Q Okay.	
		Page 48	Page 49
1	A <b>I have a board certification in emergency</b>	1 BY MR. GAHNZ:	
2	<b>medicine, a board certification in addiction</b>	2 Q Go ahead.	
3	<b>medicine, and a bachelor's degree in</b>	3 A <b>We have different ones.</b>	
4	<b>psychobiology.</b>	4 <b>So the first one would be instructor</b>	
5	Q Are you a psychiatrist?	5 <b>for modules on "Health Care Issues,"</b>	
6	A <b>I am not.</b>	6 <b>"Responding to Medical Emergencies," and</b>	
7	Q Are you a psychologist?	7 <b>"Responding to Special Needs Inmates" for the</b>	
8	A <b>I am not.</b>	8 <b>Mississippi State Standards &amp; Trainings -</b>	
9	Q The next part of your resumé deals with	9 <b>Corrections Officer Training Course.</b>	
10	presentations that you have given over the	10 <b>The second one -- there are a number</b>	
11	years; is that correct?	11 <b>of them that are very similar presentations</b>	
12	A <b>That's correct.</b>	12 <b>that all involve the safe prescribing of</b>	
13	Q Are there any of the presentations that are	13 <b>sedative hypnotics or benzodiazepines</b>	
14	contained on pages 3, 4, and 5 that are	14 <b>essentially for the Mississippi State Medical</b>	
15	relevant to any of the issues that you gave	15 <b>Association. And I can point them all out to</b>	
16	opinions on in this case?	16 <b>you, but there's probably 15 of them on here.</b>	
17	A <b>Yes.</b>	17 Q Are they called "Benzodiazepines an Update"?	
18	Q Which ones?	18 A <b>That's one of them. Sedative Hypnotics would</b>	
19	A <b>I believe a number of them.</b>	19 <b>be another word. So anytime you see</b>	
20	Q All right. Why don't we start at page 3, and	20 <b>benzodiazepine or sedative hypnotic, that would</b>	
21	you tell me which ones are --	21 <b>be relevant to the issues in this case.</b>	
22	MS. SCHNEIDER: Do you mean page 4?	22 Q All right. Anything else?	
23	THE WITNESS: Yeah, mine is page 4	23 A <b>I'll need to review. Just a moment.</b>	
24	<b>is where mine starts.</b>	24 <b>"Mental Health in the Primary Care</b>	
25		25 <b>Setting," a keynote address at an outcomes</b>	

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<p>1 conference.</p> <p>2 The ones called "Controlled</p> <p>3 Substance Update" would also involve the issues</p> <p>4 in this case.</p> <p>5 Q All right.</p> <p>6 A One called "Benzodiazepines, The Good News and</p> <p>7 Bad News."</p> <p>8 Q All right.</p> <p>9 A "Managing Controlled Substances in</p> <p>10 Mississippi."</p> <p>11 Q Are these presentations available publicly?</p> <p>12 A I don't know. They may be.</p> <p>13 Q Are the -- are these presentations that you</p> <p>14 give on an annual basis and then update based</p> <p>15 on if there's been a change in the previous</p> <p>16 year?</p> <p>17 A That is what some of these are. So there's a</p> <p>18 variety of types of presentations. I can't say</p> <p>19 there's just one type of presentation within</p> <p>20 there. In other words, some are to hospital</p> <p>21 faculty, some are to doctors within the State</p> <p>22 of Mississippi.</p> <p>23 Q Okay. All right. I think I saw somewhere that</p> <p>24 you indicated that your testimony splits about</p> <p>25 60 percent defense and 40 percent plaintiff.</p>	<p>1 Is that --</p> <p>2 A I may have said that in the past, and that may</p> <p>3 have been -- probably was accurate if I said it</p> <p>4 somewhere in the past. I would say in the last</p> <p>5 six months it's probably closer to 70 percent</p> <p>6 defense and 30 percent plaintiff or something</p> <p>7 like that. But I certainly do work for both</p> <p>8 plaintiff and defense attorneys.</p> <p>9 Q Okay. You provided a case listing for the last</p> <p>10 four years that was up to date as of</p> <p>11 November 8, 2019, right?</p> <p>12 A That is correct.</p> <p>13 Q Have you -- can you go through this list and</p> <p>14 tell me which cases you've testified on behalf</p> <p>15 of the plaintiff?</p> <p>16 A I can.</p> <p>17 Q All right.</p> <p>18 A I will say I can to the best of my knowledge.</p> <p>19 I believe I --</p> <p>20 Q All right. Go ahead.</p> <p>21 A I'll tell you if I don't recall.</p> <p>22 So you're looking at a list which</p> <p>23 says 11/8/2019 and is three pages long; is that</p> <p>24 correct?</p> <p>25 Q Um-hmm.</p>
Page 52	Page 53
<p>1 A Okay.</p> <p>2 Q The first case is State of Mississippi versus</p> <p>3 Dobbs.</p> <p>4 A Yes. Those first several cases, I don't know</p> <p>5 whether you -- those are criminal cases, and I</p> <p>6 was testifying for drug court -- just as a</p> <p>7 consultant to drug court. So it's really for</p> <p>8 neither side but just as an expert on drug</p> <p>9 testing.</p> <p>10 Q All right.</p> <p>11 A So I don't know that you call that --</p> <p>12 In the State of Mississippi versus</p> <p>13 Joshua Blunt, that was a criminal case. That</p> <p>14 was for the defendant.</p> <p>15 Mississippi Board of Medical</p> <p>16 Licensure, that was on behalf of the</p> <p>17 Mississippi Board of Medical Licensure.</p> <p>18 Mississippi Board of Nursing, two</p> <p>19 cases. Those were on behalf of the Mississippi</p> <p>20 Board of Nursing regarding nursing practice by</p> <p>21 those two nurses.</p> <p>22 The next one, Lee -- do you want me</p> <p>23 to just say the name and then defense or</p> <p>24 plaintiff or do you want me to go on?</p> <p>25 Q Yes. That would be good.</p>	<p>1 A Lee, defense. Paylan, defense. Bost, defense.</p> <p>2 Singleton, defense. On the second page the</p> <p>3 first two, Filichia and Ajibade, both defense.</p> <p>4 Then Benoit, Clark, Hays, all plaintiff, all</p> <p>5 three of those.</p> <p>6 Q Okay.</p> <p>7 A Sparks v. Tooke is defense. Brooks, plaintiff.</p> <p>8 Gracia, plaintiff. Parkes v. Jasper County,</p> <p>9 I'm not recalling that case at this moment. I</p> <p>10 think it may have been plaintiff, but I -- I</p> <p>11 just don't recall what that case is about.</p> <p>12 Leverett, defense. Ivey, defense.</p> <p>13 Wesley, defense. Harris is not a -- that is</p> <p>14 not a jail case, but it was defense.</p> <p>15 Stufflebean, defense. Legros, plaintiff.</p> <p>16 Clifton, defense. Marziale, defense. Warner,</p> <p>17 plaintiff. Angerbauer, defense. Pickle,</p> <p>18 defense.</p> <p>19 Q All right. So going back to -- through this</p> <p>20 list again -- thank you for that by the way --</p> <p>21 which out of any of these cases that are listed</p> <p>22 deal with benzodiazepines?</p> <p>23 A If you'll give me just one moment.</p> <p>24 Q That's fine.</p> <p>25 A I am not aware that any of them involve</p>

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<p>1 benzodiazepines as a central issue in the case.</p> <p>2 Q Okay.</p> <p>3 A Which is not to say that some -- you know,</p> <p>4 sometimes the plaintiff -- or, I mean, the</p> <p>5 inmate may have been taking a benzodiazepine,</p> <p>6 but that was not the issue. I don't recall</p> <p>7 which cases those even were, but it was not a</p> <p>8 central issue in any case that I'm aware of.</p> <p>9 Q There are several cases here that are listed</p> <p>10 where CCS is a defendant; is that correct?</p> <p>11 A That's correct.</p> <p>12 Q Have you ever testified on behalf of a</p> <p>13 plaintiff against CCS?</p> <p>14 A The short answer is no, because I would -- I</p> <p>15 now don't take cases involving -- since I have</p> <p>16 present cases that -- many of these cases are</p> <p>17 still ongoing, so I would not take a case with</p> <p>18 a plaintiff involving a defendant that I --</p> <p>19 where I'm representing -- where I've been</p> <p>20 retained on behalf of a defendant in another</p> <p>21 jurisdiction. Same with if I have been</p> <p>22 retained by the plaintiff, I wouldn't then take</p> <p>23 a case on their behalf while the cases are</p> <p>24 active.</p> <p>25 Q All right.</p>	<p>1 A If I might just clarify or add to my answer,</p> <p>2 I've not -- I've not been retained on behalf of</p> <p>3 CCS in this case either.</p> <p>4 Q Okay. So let's deal with that.</p> <p>5 Who contacted you -- well, in fact,</p> <p>6 how did you first learn about this case?</p> <p>7 A I received correspondence from Ms. Schneider.</p> <p>8 I don't recall if it was a phone call or an</p> <p>9 e-mail.</p> <p>10 Q Okay. And did Attorney Schneider ask you to</p> <p>11 provide opinions with respect to anyone other</p> <p>12 than Dr. Fatoki?</p> <p>13 A Let me refer to the scope of work I was given.</p> <p>14 Q And just for our purposes, where -- where are</p> <p>15 you looking to find the scope of work?</p> <p>16 A The first page of my Rule 26 report.</p> <p>17 Q Okay.</p> <p>18 A No. I was only asked to provide opinions</p> <p>19 regarding the care of Ms. Freiwald by</p> <p>20 Dr. Fatoki.</p> <p>21 Q Okay.</p> <p>22 A Now, of course, she was within a jail cell. By</p> <p>23 necessity I have to look at the health care</p> <p>24 that was delivered by the nurses who were</p> <p>25 working in that jail as well.</p>
Page 56	Page 57
<p>1 Q Did your scope of work ever change in this</p> <p>2 case?</p> <p>3 A No. I've been provided like -- I was first</p> <p>4 asked to -- asked whether I agreed or disagreed</p> <p>5 with the plaintiffs' expert reports. I've</p> <p>6 since been asked do I agree or disagree with</p> <p>7 their supplemental reports, and then do I agree</p> <p>8 or disagree with the other defense expert</p> <p>9 reports. So I guess to some extent, yes, they</p> <p>10 change a little bit.</p> <p>11 Q Have you ever spoken with any of the attorneys</p> <p>12 representing Brown County, Sheriff Gossage, or</p> <p>13 Officer Peters?</p> <p>14 A I have not.</p> <p>15 Q Have you spoken with any of the attorneys</p> <p>16 representing CCS, Nurse Jones, or Nurse</p> <p>17 Blozinski?</p> <p>18 A I have not.</p> <p>19 Q Have you spoken with any of the parties in this</p> <p>20 case?</p> <p>21 A I have not.</p> <p>22 Q Okay. Have you had any interaction with</p> <p>23 Dr. Fatoki, be it e-mail, letters?</p> <p>24 A I have not.</p> <p>25 Q Okay. Prior to this case, did you know who</p>	<p>1 Dr. Fatoki was?</p> <p>2 A In general I would say no. We do have an</p> <p>3 annual meeting of correctional health care</p> <p>4 physicians, and I may or may not have ever --</p> <p>5 Q Bumped into --</p> <p>6 A -- bumped into him, but I'm not aware of it.</p> <p>7 Q All right. Have you ever had your testimony</p> <p>8 stricken or limited by a Court in any fashion?</p> <p>9 A Certainly not as it relates to correctional</p> <p>10 health care.</p> <p>11 Q Okay. That tends to me to be a yes.</p> <p>12 A Okay. The third case on my case list -- let me</p> <p>13 turn to it.</p> <p>14 Q State of Mississippi versus Cileste?</p> <p>15 A No, I'm sorry. It is the fourth, the next one.</p> <p>16 Q That's okay.</p> <p>17 A State of Mississippi versus Joshua Blunt. That</p> <p>18 was a -- that is a criminal case involving</p> <p>19 Mr. Blunt who left his infant in a car and the</p> <p>20 child died of a hot -- in a hot car. He was an</p> <p>21 indigent defendant. And I treated him for his</p> <p>22 mental health condition after this happened,</p> <p>23 and I was prepared to provide pro bono</p> <p>24 testimony regarding his state of mind in that</p> <p>25 he didn't intend to leave the baby in the car.</p>

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1 Q	Okay.	1 Q	And all those are available on the internet, those expert directories?
2 A	<b>And the Court ruled that what he told me after the fact and because I was not an expert in Forgotten Baby Syndrome or hot car deaths, that I was not allowed to testify at his criminal trial.</b>	3 A	<b>To the best of my knowledge.</b>
7 Q	Okay. And was that as a result of what's called a Daubert motion?	4 Q	By --
9 A	<b>No. It -- I mean, no, it was not. It was just a pretrial hearing about what all was going to be allowed at his -- at his trial. There was ultimately no trial. He took a plea.</b>	5 A	<b>Or paper. I'm not certain about paper versus the internet.</b>
13 Q	Okay. With respect to being retained in this case, did you work through a service?	7 Q	And you have a biography that's listed on those expert services?
15 A	<b>No.</b>	9 A	<b>Not services. Directories.</b>
16 Q	Have you worked through a service in the -- an expert service in the past?	10	<b>I mean, in other words, there is a directory of expert witnesses in which my biography is listed. I do not work for any services, as I told you before, where they retain cases on my behalf.</b>
18 A	<b>No.</b>	15 Q	Okay. You pay to have your biography in a directory?
19 Q	How is it that people find you as a -- as an expert?	17 A	<b>That is correct.</b>
21 A	<b>Well, as you pointed out, I have a website where my CV is available. Most of my referrals come from other attorneys -- from attorneys. And I am listed in three expert witness directories.</b>	18 Q	Have you ever worked with any of the attorneys in this case? And do you know the law firms that are involved?
		21 A	<b>I believe that I do. So I've never worked with any of the attorneys involved in this case before.</b>
24 Q	Okay.	24 Q	Okay.
25 A	<b>I believe that I have been retained by the firm</b>		
	Page 60		Page 61
1	<b>of Heyl Royster before.</b>	1	believe he provided a list of his testimonies.
2 Q	On behalf of -- on a CCS matter?	2	I don't believe -- as required by federal rules. I don't know if the case he's
3 A	<b>I don't recall.</b>	3	testifying about he's provided testimony in or he's been disclosed in, so it's possible that
4 Q	When was that?	4	he's consulting in that case based on the limited testimony he's provided about it so far. If it is -- depending on where the case
5 A	<b>Perhaps a year ago. I don't recall exactly.</b>	5	is venued and its status, he may have a
6 Q	Is that listed on your -- on your case log?	6	consultant privilege regarding his
7 A	<b>One moment. If I am not mistaken -- and this -- so this is -- I'm not going to say this with 100 percent certainty. I believe the case is going to be E/O Clifton v. Champaign County, Illinois. And I believe further that I was retained by Heyl Royster on behalf of the Champaign County defendants. It's possible CCS was a defendant, but I don't believe I was retained on their behalf. And, again, I'm saying that to the best of my recollection at this moment.</b>	7	consultations with counsel in that case that's retained him. He may not even be disclosed in
18 Q	What attorney at Heyl Royster are you working with on the Clifton matter?	8	that case.
20 A	<b>The name escapes me at this moment.</b>	9	So with those conditions, I'm
21 Q	All right. Is that a jail-related --	10	willing to agree to allow him to provide some limited answers at this point, but those are my
22 A	<b>It is.</b>	11	concerns right now.
23 Q	And what is the issue in that case?	12	BY MR. GAHNZ:
24	MR. SALEMI: I'm going to make an objection. I'm going to let him answer, but I	13	19 Q You may answer the question.
25		20 A <b>Could you ask the question again, please?</b>	20 A <b>I mean, ma'am, could you read it back? I'm sorry.</b>
		21	23 Q It's easier for me just to ask it again.
		22	24 A <b>Okay.</b>
		25	25 Q What is the issue in that case, Clifton versus

		Page 62	Page 63
1	Champaign County?	1	Dr. Thomas Fowlkes.
2	<b>A It was a jail death case. I don't recall specifically the cause of death. And I have provided some type of sworn testimony, so I have been disclosed in all of these cases that are on this list.</b>	2	BY MR. GAHNZ:
3		3	Q Okay, Doctor, while we were off the record, I
4		4	marked in your binder Exhibits 204 and
5		5	Exhibits 205. Will you take a look? They
6		6	should be your initial report as well as all
7	Q And that was going -- you foresaw my next	7	7 the attachments, which is your Rule 26 report,
8	question. We're going to get done in a hurry.	8	correct?
9	So you gave a deposition in that	9	<b>A Correct.</b>
10	case?	10	Q And that is a 41-page document, the actual
11	<b>A I believe that's correct.</b>	11	report?
12	Q Okay. And then --	12	<b>A That is correct.</b>
13	<b>A I can't -- I don't have -- I put down only --</b>	13	Q And it's signed by you on page 41?
14	<b>only cases in which I provided sworn testimony, so...</b>	14	<b>A That is correct.</b>
15		15	Q And that's been marked as Exhibit 204, correct?
16	Q Okay. All right. Why don't we take a break.	16	<b>A That is correct.</b>
17	THE VIDEOGRAPHER: We are off the	17	Q All right. Then the next is Exhibit 205, which
18	record at 10:49 a.m. This is the end of disc	18	is your supplemental report which you authored
19	number one in the deposition of Dr. Thomas	19	several weeks ago?
20	Fowlkes.	20	<b>A That's correct.</b>
21	(Recess taken, 10:49 a.m. to 10:58 a.m.)	21	Q And that's an 11-page document with your
22	(Exhibit Nos. 204 and 205 were marked.)	22	signature on the eleventh page, correct?
23	THE VIDEOGRAPHER: We are back on	23	<b>A That is correct.</b>
24	the record at 10:58 a.m. This is the beginning	24	Q All right. And that's 205, right?
25	of disc number two in the deposition of	25	<b>A That is correct.</b>
		Page 64	Page 65
1	Q And within these two documents are all of your	1	<b>ask -- answer the questions which I am asked.</b>
2	opinions, correct?	2	BY MR. GAHNZ:
3	<b>A They are a summary of my opinions in this</b>	3	Q Do you intend to look at any more documents?
4	<b>matter, yes. They're all the opinions that I</b>	4	<b>A If I am provided them, yes.</b>
5	<b>have at this moment.</b>	5	MR. GAHNZ: Counsel, the rules are
6	Q Well, this is my one and only chance to ask you	6	pretty clear that his opinions need to be
7	about your opinions.	7	contained within his report. If there's
8	Are you going to testify about	8	additional opinions, are you going to
9	things that are outside of these two reports?	9	provide -- are you going to offer him again for
10	MS. SCHNEIDER: Object to the form.	10	testimony?
11	<b>THE WITNESS: Well, that depends on</b>	11	MS. SCHNEIDER: He didn't say there
12	<b>what questions you ask me. I mean, this is a</b>	12	was going to be additional opinions. He said
13	<b>summary of my opinions and this is all I intend</b>	13	the summary of his opinions are contained in
14	<b>to offer, but if I am asked additional</b>	14	the reports and ask him about those opinions.
15	<b>questions, I may have additional opinions.</b>	15	I think what he's saying is he can't anticipate
16	BY MR. GAHNZ:	16	what he's going to be asked at the time of
17	Q Such as what?	17	trial. I don't intend to send him any more
18	MS. SCHNEIDER: Object to the form.	18	materials unless -- you know, I probably will
19	BY MR. GAHNZ:	19	provide him with additional depositions as they
20	Q What additional opinions do you intend to	20	come in, but I don't intend to ask him to
21	formulate in this case?	21	formulate new or additional opinions.
22	MS. SCHNEIDER: Object to the form.	22	BY MR. GAHNZ:
23	Misstates his testimony.	23	Q Have you had enough time since the time that
24	<b>THE WITNESS: I don't intend to</b>	24	you were retained to review all of the
25	<b>formulate any other opinions, but I am going to</b>	25	materials in this case?

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1 A <b>That have been provided to me, yes, I have.</b>	1 BY MR. GAHNZ:	
2 Q Have you had ample time to answer the questions	2 Q So you don't need the prior medical records to	
3 that were asked of you in the initial scope of	3 formulate your opinions?	
4 your retainer?	4 A <b>I have formulated my opinions based on the</b>	
5 A <b>I have.</b>	5 <b>information that has been provided to me up</b>	
6 Q All right. Have you had ample time to provide	6 <b>until this point.</b>	
7 your supplemental report?	7 Q Have you been provided with any prior medical	
8 A <b>I have.</b>	8 records?	
9 Q And these are the opinions that are -- that you	9 A <b>Very limited.</b>	
10 hold are contained within these two reports,	10 Q What prior medical records have you been	
11 correct?	11 provided?	
12 A <b>At this time that is correct. But you asked</b>	12 A <b>On page 2 of my report at the top it appears</b>	
13 <b>about would I intend to review additional</b>	13 <b>that Ms. Freiwald received some of her prior</b>	
14 <b>documents. And you'll note in my report that I</b>	14 <b>medical care at Bellin Health.</b>	
15 <b>had asked for additional prior medical records;</b>	15 Q Okay.	
16 <b>I have not received them. If I do receive</b>	16 A <b>However, this is a summary of the five things</b>	
17 <b>them, I will be glad to review them, and they</b>	17 <b>that were in there and the only five things</b>	
18 <b>might or might not change my opinions. If I'm</b>	18 <b>that were in there; one emergency room</b>	
19 <b>not provided them, I won't review them.</b>	19 <b>department visit in 2013, one colonoscopy in</b>	
20 Q Okay. So with respect to your opinions,	20 <b>2013, another emergency department visit from</b>	
21 they're not final because you don't have the	21 <b>2013, one MRI, and one emergency department</b>	
22 prior medical records that you want?	22 <b>visit from 11 of 2015. But the primary care</b>	
23 MS. SCHNEIDER: Object to the form.	23 <b>records don't appear to be there.</b>	
24 That misstates his testimony.	24 Q The records that you reviewed indicated that	
25 <b>THE WITNESS: I disagree.</b>	25 there was no psychiatric care prior to 2016,	
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1 correct?	1 <b>what that -- they could or could not. At this</b>	
2 A <b>I don't believe that's correct.</b>	2 <b>moment I don't believe so. I've formed my</b>	
3 Q When did she receive psychiatric care prior to	3 <b>opinions based upon the records that have been</b>	
4 2016?	4 <b>given to me, so my opinions are what they are</b>	
5 A <b>That wasn't the question. The question you</b>	5 <b>based upon what I've been given.</b>	
6 <b>asked me, as I understood it, was the records I</b>	6 BY MR. GAHNZ:	
7 <b>received indicated that she received no</b>	7 Q Within these 50-odd pages of report have you	
8 <b>psychiatric care prior to then.</b>	8 stated the basis or the bases for all of the	
9 <b>And the reason I disagreed is I</b>	9 opinions that you hold in this case?	
10 <b>believe the record didn't say whether she had</b>	10 A <b>I believe that I've adequately summarized those</b>	
11 <b>received, so no, we don't know whether she</b>	11 <b>bases, yes.</b>	
12 <b>received psychiatric care before 2016 or not.</b>	12 Q All right. And to the extent that there's	
13 Q Would that make any difference to your opinions	13 factual inaccuracies in your report, would you	
14 as to whether or not she received psychiatric	14 agree that that could impact your opinions?	
15 care prior to 2016?	15 MS. SCHNEIDER: Object to the form.	
16 A <b>Well, since I haven't reviewed those records, I</b>	16 <b>THE WITNESS: I don't know one way</b>	
17 <b>don't know if it would make a difference to my</b>	17 <b>or the other. If you would like to point some</b>	
18 <b>opinions or not.</b>	18 <b>out, I can tell you whether it changes my</b>	
19 Q Well, my question was a little different than	19 <b>opinion or not.</b>	
20 that.	20 BY MR. GAHNZ:	
21 If she received any sort of	21 Q Well, that was -- if you have some things in	
22 psychiatric care prior to 2016, would that have	22 here, in your report, that are factually	
23 any impact on your opinions?	23 inaccurate, would that impact your opinions?	
24 MS. SCHNEIDER: Object to the form.	24 MS. SCHNEIDER: Same objection.	
25 <b>THE WITNESS: Well, I don't know</b>	25 <b>THE WITNESS: I don't know one way</b>	

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1 <b>or the other without looking -- without being</b> 2 <b>told new information.</b>	1 <b>contained in the preregistration information</b> 2 <b>and --</b>
3   BY MR. GAHNZ:	3   Q   What was contained in the preregistration 4   information?
4   Q   Let's turn to page 17. You wrote that "It is 5   unclear why Ms. Freiwald surrendered to BCJ" -- 6       I'm assuming that's Brown County 7   Jail?	5   A <b>The instruction to bring prescription</b> 6 <b>medications.</b>
8   A <b>Yes.</b>	7   Q   Okay.
9   Q   -- "on the evening of 10/27/16 without her 10   prescription medications." Correct?	8   A <b>And it told when and where to report. So she</b> 9 <b>reported when and where as contained in those</b> 10 <b>instructions but did not bring prescription</b> 11 <b>medications.</b>
11   A <b>Correct.</b>	12 <b>But my next sentence was really the</b> 13 <b>point of that. Even if she had been -- only</b> 14 <b>expected to be incarcerated one night, she</b> 15 <b>would have needed her prescription medications</b> 16 <b>for that night. So even if it was her</b> 17 <b>expectation that she was only going to be there</b> 18 <b>one night, she still should have brought her</b> 19 <b>medications so she would have them that night.</b>
12   Q   What information did you review to determine 13   the answer to that question?	20   Q   So -- and that's really the point that I wanted 21   to talk about.
14   A <b>Well, I reviewed the information in the</b> 15 <b>supplemental report and the deposition of her</b> 16 <b>son which made it somewhat more clear about why</b> 17 <b>she did that, but my -- this is -- this</b> 18 <b>statement is a little bit different, because I</b> 19 <b>don't know why she didn't bring her</b> 20 <b>prescription medications. Her son and other</b> 21 <b>people, including her therapist, said that she</b> 22 <b>was suspecting to only be there one night, so</b> 23 <b>one can -- one can make a guess, but one does</b> 24 <b>not know for certain why she showed up without</b> 25 <b>her prescription medications, because it was</b>	22   How was she going to be able to take 23   her medications that night?
1   brought her medications, how was she going to 2   be able to take them that evening?	24   A <b>She wasn't. She didn't bring them.</b>
3   A <b>Well, based on my experience in common practice</b> 4 <b>in a jail such as the Brown County Jail, it is</b> 5 <b>my expectation that had she brought her</b> 6 <b>medications, the security staff would have had</b> 7 <b>the nursing staff evaluate those medications</b> 8 <b>that night, possibly talk to a provider that</b> 9 <b>night to determine which medications would be</b> 10 <b>sent with her to Huber, and she would take it</b> 11 <b>to Huber. That's the way it would normally</b> 12 <b>work.</b>	25   Q   Well, I understand that. Assuming she had
13   Q   Okay.	1   standard is?
14   A <b>But since she didn't have any medications,</b> 15 <b>there wasn't any way to do that.</b>	2   A <b>Well, if you would -- so --</b>
16   Q   All right. So No. 4 on that same page, you 17   indicate that "At Brown County Jail, as 18   essentially at every other jail, prescriptions 19   from the outside must be reviewed and approved 20   by the facility physician before they can be 21   dispensed to the patient."	3   Q   I'm going to ask you the question, and then 4   I'll go to the book.
22       That's different than the NCCHC 23   standard on that, isn't it?	5       What do you believe the NCCHC 6   standard is with respect --
24   A <b>I don't believe so.</b>	7   A <b>I believe it's consistent with this statement.</b>
25   Q   Do you -- what do you believe the NCCHC	8   Q   Okay. And which standard are you referring to?
	9   A <b>I would need to -- I will need to review my</b> 10 <b>copy of the NCCHC standards. If I can look</b> 11 <b>them up.</b>
	12   Q   So if the standard J-D-02, essential -- is that 13   an essential standard of the NCCHC?
	14   A <b>I'll take your word for it.</b>
	15   Q   If it provides that -- the following:
	16       "Therefore, inmates being admitted who report 17   currently taking medications or who bring their 18   medications with them are to continue the 19   medications unless there is a clinical reason 20   to alter or discontinue it," would you agree 21   with that statement?
	22   A <b>Well, number one, you're reading -- I would</b> 23 <b>need to see the whole policy, but that's not</b> 24 <b>inconsistent with this right here.</b>
	25   Q   Fair enough. But now answer my question.

Page 74		Page 75
1	Do you agree with that statement?	1 entered the jail, was she on prescribed
2	<b>A I agree with that statement.</b>	2 medications?
3	MS. SCHNEIDER: Asked and answered.	3 <b>A It was my understanding from your --</b>
4	4 BY MR. GAHNZ:	4 Q The question is, was she on --
5	5 Q And under -- what is a compliance indicator?	5 MR. SALEM: Hold on. Hold on.
6	6 <b>A In general, a compliance indicator to NCCHC</b>	6 MS. SCHNEIDER: Yeah.
7	<b>standards is how to tell if the facility is</b>	7 MR. SALEM: Yeah. Objection.
8	<b>compliant with that standard or not.</b>	8 You've got to allow him to --
9	9 Q All right. Under compliance indicator No. 9 on	9 BY MR. GAHNZ:
10	10 J-D-02 it provides, "Inmates entering the	10 Q Go ahead and answer. Go ahead and answer. I'm
11	11 facility on verifiable prescription medication	11 sorry.
12	12 continue to receive the medication in a timely	12 MR. SALEM: You've got to allow him
13	13 fashion."	13 to answer.
14	14 Was Ms. Freiwald on prescription	14 BY MR. GAHNZ:
15	15 medications that had been verified?	15 Q I didn't mean to step on you.
16	16 <b>A No.</b>	16 <b>A That's okay.</b>
17	17 Q Okay.	17 MR. SALEM: Hold on. Number two,
18	18 <b>A She didn't bring them, so they couldn't be</b>	18 the video will show there's a pattern of
19	19 <b>verified.</b>	19 argumentative questions that's developing here,
20	20 Q Slightly different question.	20 so I object that it's argumentative, and I
21	21 <b>A I don't believe so.</b>	21 object to form. I think the last question was
22	22 Q All right. Well, if we want to argue, we'll	22 compound, but you can answer if you can.
23	23 get down -- we'll get down and be here till	23 <b>THE WITNESS: Okay. It was --</b>
24	24 tomorrow.	24 MS. SCHNEIDER: Join.
25	25 But at the time that Ms. Freiwald	25 <b>THE WITNESS: It was my</b>
Page 76		Page 77
1	<b>understanding that your last question asked was</b>	1 <b>able -- I would like to be able to review the</b>
2	<b>she on verified medications. And so she -- her</b>	2 <b>standard you're referring to.</b>
3	<b>medications had not been verified by the jail.</b>	3 BY MR. GAHNZ:
4	<b>I do agree that she had been prescribed</b>	4 Q Sure. I wanted you to look at -- there's the
5	<b>medications prior to coming to the jail.</b>	5 highlighted section at page 72, the last
6	6 BY MR. GAHNZ:	6 paragraph under the discussion.
7	7 Q And the medications that she was on were	7 MR. SALEM: Can I see it first,
8	8 verified by the jail?	8 please?
9	9 <b>A Not that night. They were provided -- they</b>	9 BY MR. GAHNZ:
10	<b>were verified later after her son brought them.</b>	10 Q So why don't you do this, Doctor. Would you
11	11 Q Okay. So within that standard it talks about	11 read the last paragraph on page 72 into the
12	12 the facility has several options to ensure that	12 record?
13	13 the inmates admitted on prescribed medications	13 MR. SALEM: And I'll renew my
14	14 continue to receive their necessary drugs in a	14 objection that this is not an NCCHC standard.
15	15 timely manner.	15 It is in a section entitled Discussions, which
16	16 Are you aware of that standard	16 is a reference within the standards to an NCCHC
17	17 within the NCCHC?	17 standard. So I object to form.
18	18 MS. SCHNEIDER: Object to the form.	18 MS. SCHNEIDER: Join.
19	19 MR. SALEM: And I object to the	19 <b>THE WITNESS: So this is standard</b>
20	20 form in that counsel is not reading standards.	20 <b>J-D-02. And the standard itself is listed on</b>
21	21 Counsel is reading additional information that	21 <b>the first page, the compliance indicators 1</b>
22	22 are attached to standards but not referencing	22 <b>through 11, several of which apply here.</b>
23	23 standards. So I object to form. It misstates	23 <b>And then what is the specific</b>
24	24 the NCCHC standards.	24 <b>paragraph you asked me to read?</b>
25	25 <b>THE WITNESS: I would like to be</b>	25

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1 BY MR. GAHNZ:  
 2 Q The last paragraph at the bottom of page 72.  
 3 A Okay. "The facility has several options to  
 4 ensure that inmates admitted on prescribed  
 5 medication continue to receive the necessary  
 6 drugs in a timely manner. One protocol  
 7 requires the provider to be contacted for a  
 8 verbal order after health care staff have  
 9 verified the prescription by contacting the  
 10 community prescriber or pharmacy. Another  
 11 authorizes the nurses to give the medications  
 12 based on the community prescriber's valid order  
 13 until the facility provider can see the inmate.  
 14 Some protocols allow the use of medication  
 15 brought into the facility if it is in original  
 16 pharmacy packaging and labeled as required and  
 17 staff verified the order with the community  
 18 prescriber or pharmacist."

19 Q Okay. Thank you.

20 So that discussion with respect to  
 21 the standard is different than what you stated  
 22 in No. 4, correct, is at essentially every  
 23 other jail prescriptions must be reviewed by  
 24 the -- by the jail doctor?

25 MS. SCHNEIDER: Object to the form.

1 THE WITNESS: I do not believe it's  
 2 inconsistent. And that is my opinion and it's  
 3 not changed.  
 4 BY MR. GAHNZ:  
 5 Q Okay. In Ms. Freiwald's case which of her  
 6 medications were not medically appropriate?  
 7 MS. SCHNEIDER: Object to the form.  
 8 THE WITNESS: So in this -- in this  
 9 No. 4 I'm not referencing Ms. Freiwald in  
 10 particular in this. What I said was, there are  
 11 a number of reasons that it is prudent  
 12 prescribing practice that the provider -- that  
 13 the provider decide which medicines are to be  
 14 continued and which are not, and I provided  
 15 examples that may or may not apply in her case.

16 A very common example that I will  
 17 give that does not apply in this case but is a  
 18 very common reason is oftentimes patients are  
 19 not compliant with their medications and they  
 20 have been prescribed five different kind of  
 21 blood pressure medicines. So it's not -- as an  
 22 example, it's not safe to continue all five  
 23 blood pressure medicines because they haven't  
 24 been compliant. You would potentially harm the  
 25 patient with all those blood pressure medicines

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1 that they weren't taking them. That is an  
 2 example of why it's prudent practice to discuss  
 3 with the provider.

4 Another example is that oftentimes  
 5 patients have received medications from outside  
 6 providers that are inappropriate or are not  
 7 necessary in a jail setting. An example in  
 8 this case would be the Ambien that Ms. Freiwald  
 9 had been prescribed. She neither brought it  
 10 nor would it have been -- should it have been  
 11 continued had she brought it.

12 BY MR. GAHNZ:

13 Q All right. So have you completed your answer?

14 A I have.

15 Q All right. Motion to strike as nonresponsive.

16 My question, sir, was, were there  
 17 any medications that Ms. Freiwald was  
 18 prescribed that were medically inappropriate?

19 MS. SCHNEIDER: Asked and answered  
 20 and object to the form.

21 THE WITNESS: So she was on  
 22 medications, and they discussed those  
 23 medications with Dr. Fatoki. He continued some  
 24 of those medications he did not continue others  
 25 with those medications.

1 BY MR. GAHNZ:

2 Q Have you completed your answer?

3 A I have.

4 Q Motion to strike as nonresponsive. I'll ask  
 5 again.

6 Were any of the medications that  
 7 Ms. Freiwald was prescribed as she entered the  
 8 jail not medically appropriate?

9 A Can you show me --

10 MS. SCHNEIDER: Asked and answered  
 11 and --

12 THE WITNESS: Can you show me where  
 13 that's my opinion? I mean, I don't necessarily  
 14 have that opinion that they were inappropriate.  
 15 I believe that it was appropriate to not  
 16 continue some of them. So there's a -- that's  
 17 a different -- that's different.

18 BY MR. GAHNZ:

19 Q Sir, I'm just reading from your report.

20 A Yes. And I've told you that this is not --  
 21 these were examples of reasons that that's  
 22 prudent prescribing practice, not specific to  
 23 Ms. Freiwald.

24 Q So I guess my -- my confusion is you added all  
 25 of this verbiage into your report. And is it

Page 82	Page 83
1 your testimony that 4(A) does not apply to 2 Ms. Freiwald? <b>3 A That is not my testimony whatsoever.</b> 4 Q Okay. So then can you tell me which, if any, 5 of the prescriptions that she was prescribed as 6 she entered the jail were medically 7 inappropriate?	1 MS. SCHNEIDER: Object to the form. <b>2 THE WITNESS: I am not aware of any.</b> 3 Again, I told you that this is the reasons that 4 it is -- that -- that nurses should not just 5 continue medications but should talk to a 6 provider. The person may have two different 7 type of medications of one kind or another, and 8 those are duplicates and so only one should be 9 continued.
8 MS. SCHNEIDER: Object to the form. <b>9 THE WITNESS: First -- first of all,</b> 10 <b>this does not say that her medicines were</b> 11 <b>inappropriate. That is not my opinion.</b>	10 <b>That is -- that is an example of</b> 11 <b>what I'm telling you that it's prescribing</b> 12 <b>practice or safe.</b>
12 <b>My opinion is that Dr. Fatoki's</b> 13 <b>prescribing practice was appropriate, and I</b> 14 <b>gave reasons why that was appropriate. Some of</b> 15 <b>her medications were appropriately not</b> 16 <b>continued. I am not phrasing them as</b> 17 <b>inappropriate medications; they were prescribed</b> 18 <b>by outside providers, and Dr. Fatoki did not</b> 19 <b>feel like they should be continued and I agree</b> 20 <b>with that. You can call them inappropriate if</b> 21 <b>you would like. I don't call them that.</b>	13 BY MR. GAHNZ: 14 Q Were there any medications that Ms. Freiwald 15 was taking -- well, let me read it. You wrote 16 "They may not be taking the medications as 17 prescribed."
22 BY MR. GAHNZ: 23 Q Which of the medications that Ms. Freiwald was 24 prescribed as she entered the jail were 25 therapeutically duplicative?	18 Is there any indication that 19 Ms. Freiwald was taking any of her medications 20 other than as prescribed? <b>21 A Yes.</b> 22 Q Which medications? <b>23 A Just a minute. So --</b> 24 Q I don't mean to -- I don't want to step on your 25 answer, so I'm going to ask you to tell us what
Page 84	Page 85
1 document you're referring to. <b>2 A Okay. I'm referring to a Bates stamp</b> 3 <b>HRVACCS12.</b> 4 Q Okay. Go ahead. <b>5 A So -- just one moment, please.</b> 6 <b>So as an example, the -- this sheet</b> 7 <b>has a list of when these prescriptions were</b> 8 <b>last filled.</b> 9 Q Okay. <b>10 A Some of them are 30-day prescriptions, some of</b> 11 <b>them are 90-day prescriptions.</b>	1 <b>73 remaining. So, in other words, that's more</b> 2 <b>than 90 days and 73 remaining, so not taking</b> 3 <b>that as prescribed.</b> 4 Q Okay. The clonazepam, is it your understanding 5 that she was to -- what was your understanding 6 as to what she was to be taking, Ms. Freiwald? <b>7 A The instructions on the bottle were one tablet</b> 8 <b>by mouth at night and half tablet as needed for</b> 9 <b>anxiety.</b>
10 Q Okay. So as needed means that sometimes if you 11 don't feel like you have to take it, you 12 wouldn't necessarily take it? <b>13 A That's correct.</b> 14 Q Okay. All right. Going back to your report, 15 you indicated that another reason why it's a 16 prudent policy to have the medications reviewed 17 is that some are not medically necessary. At 18 4(B) at page 18, right? <b>19 A And may not be safe within a jail environment.</b> 20 Q We'll get to that. But were there any 21 medications that Ms. Freiwald was prescribed 22 when she got to the jail that were not 23 medically necessary? <b>24 A There were some that were -- were</b> 25 <b>inappropriately prescribed, yes.</b>	

		Page 86	Page 87		
1	Q	Which?	1	Q	And did he also prescribe the gabapentin?
2	A	<b>Gabapentin.</b>	2	A	<b>I don't believe so. In other words, it's listed on -- as a medication that she's taking, but I don't know whether -- he may have refilled it. I don't believe he was the person that started it, but I don't even -- I'm not certain that he even refilled it.</b>
3	Q	Okay.	3		
4	A	<b>Clonazepam.</b>	4		
5	Q	Okay.	5		
6	A	<b>And then Ambien, although not -- it does not fall in that category. In other words, it's not necessarily inappropriately prescribed, but it would not be safe in a jail setting.</b>	6		
7			7		
8			8	Q	Did Dr. Sheets violate the standard of care by prescribing clonazepam?
9			9		
10	Q	So who prescribed her the clonazepam and the gabapentin?	10		MS. SCHNEIDER: Object to the form.
11			11		<b>THE WITNESS: I believe it was</b>
12	A	<b>Well, the gabapentin I'm not certain about.</b>	12		<b>not -- not prudent of him to have restarted that clonazepam, yes. I mean, I don't know</b>
13	Q	Okay.	13		<b>whether it's a breach of the standard of care.</b>
14	A	<b>I don't believe -- the best that I can tell, Nurse Practitioner Page did not prescribe that medication but only listed it as a medication she was on. That's part of the medical records I don't have. I believe she probably received it from Bellin Health.</b>	14		<b>It's not a very safe prescribing practice.</b>
15			15		
16			16	BY MR. GAHNZ:	
17			17	Q	All right. Assume that Dr. Sheets also
18			18		prescribed the gabapentin.
19			19	A	<b>Okay.</b>
20	Q	Do you know who Dr. Sheets is?	20	Q	Would he have violated the standard of care by prescribing Ms. Freiwal Gabapentin?
21	A	<b>Yes.</b>	21		
22	Q	Did Dr. Sheets prescribe the clonazepam?	22		MS. SCHNEIDER: Object to the form.
23	A	<b>He did.</b>	23		<b>THE WITNESS: I don't see any</b>
24	Q	And he's a psychiatrist?	24		<b>rationale in his note for the -- for the reason</b>
25	A	<b>To the best of my knowledge, he is.</b>	25		<b>of that. In other words, it was my</b>
		Page 88	Page 89		
1		<b>understanding from some records that Ms. Freiwal Gabapentin was originally prescribed for back pain, which is a non-FDA indication, so an off-label indication. That does not mean it's a breach of the standard of care, but it does mean that it's not an FDA indication. I'm not aware that Dr. Sheets was a pain management doctor, but to the extent that he provided it for back pain, yes, it would probably be inappropriate for a psychiatrist to prescribe gabapentin for chronic pain.</b>	1	A	<b>Yes.</b>
2			2	Q	Okay. Is it your understanding that Huber inmates are responsible for their own medical care?
3			3		
4			4		
5			5	A	<b>That is correct. In general. Not emergency care, but in general, yes.</b>
6			6		
7			7	Q	Okay. So in that circumstance, the prescriber responsible for her care would have been either the Nurse Practitioner Page or Dr. Sheets, fair?
8			8		
9			9		
10			10		
11			11		MR. SALEMI: I'm sorry, what circumstance?
12			12		
13	BY MR. GAHNZ:		13		MR. GAHNZ: Under the circumstance that she's responsible for her own medical care.
14	Q	All right. Continuing on page 18 under No. 5. You talk about the -- the sentencing order, correct?	14		
15			15		
16			16		MS. SCHNEIDER: Object to the form.
17	A	<b>That's correct.</b>	17		MS. DOYLE: I'll join.
18	Q	And one of the things that you wrote was, "A reasonable provider would interpret that to mean all prescriptions which were currently being prescribed by the prescriber responsible for her care." Correct?	18		<b>THE WITNESS: No, I believe in this</b>
19			19		<b>case Dr. Fatoki was the medical director at the</b>
20			20		<b>jail and would have the ultimate authority over what medications would be taken by inmates even if they were prescribed by outside prescribers.</b>
21			21		
22			22		
23	A	<b>That is correct.</b>	23		<b>So, in other words, yes, she would</b>
24	Q	And by that, you mean the judge's order to take all prescribed medications?	24		<b>go back potentially to Nurse Practitioner Page, not Dr. Sheets. Dr. Sheets hadn't seen her</b>
25			25		

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<p>1 since March and no longer worked there. But      2 Nurse Practitioner Page could prescribe      3 whatever medications that she wanted to, but it      4 would be up to Dr. Fatoki whether it was      5 medically appropriate to continue those while      6 she was a Huber inmate.</p>	<p>1 necessarily been prescribed. I allow them to      2 take which ones are medically appropriate.      3 When they get out and when they go      4 back to their prescriber and they talk to the      5 Court about whether they do or don't take those      6 medications, in other words, this happens all      7 the time in my practice and in every other      8 practice.</p>
<p>7 BY MR. GAHNZ:      8 Q And that's really what I'm driving at. The      9 fact that Fatoki approved or disapproved the      10 medication didn't change whether it had been      11 prescribed?</p>	<p>9 Q What happens all the time?</p>
<p>12 A That is correct.      13 Q Okay. So in order to comply with the Court's      14 order, Ms. Freiwald was required to take the      15 clonazepam and the gabapentin?</p>	<p>10 A Inmates come to jail with prescriptions that      11 are not continued in jail for a variety of      12 reasons. And those I listed in No. 4.</p>
<p>16 MS. SCHNEIDER: Object to the form.      17 MS. DOYLE: I'll join.</p>	<p>13 Q Right.</p>
<p>18 THE WITNESS: I disagree.      19 BY MR. GAHNZ:      20 Q And why is that?</p>	<p>14 A So it would be dangerous to just blindly      15 continue all medications. In other words, if a      16 person comes with five blood pressure medicines      17 and you take it literally that you should give      18 them all five of their blood pressure      19 medications and they haven't been taking them      20 and now they're in jail and you give them five      21 pills, they might be dead of low blood      22 pressure.</p>
<p>25</p>	<p>23 So it's only prudent for you to      24 review them and continue the ones that are      25 appropriate. And that's what the Court's --</p>
Page 92	Page 93
<p>1 that is -- in my experience is what the Court's      2 intentions are.</p>	<p>1 A I do.</p>
<p>3 Q There's nothing in the sentencing transcript      4 that talks about which -- well, strike that      5 question.</p>	<p>2 Q All right. And that's what the judge ordered?      3 A And I told you my interpretation of that is --      4 is not a literal interpretation.</p>
<p>6 The order, though, reads that      7 Ms. Freiwald was to take all prescribed      8 medications as a condition of her sentence?</p>	<p>5 Q Okay.</p>
<p>9 A You can -- if you want to show me the exact      10 wording --</p>	<p>6 A This order was also the one that was signed      7 after Ms. Freiwald's death.</p>
<p>11 Q Why don't you turn to Exhibit 10.</p>	<p>8 Q All right. Have you completed your answer?</p>
<p>12 A I don't have Exhibit 10 I don't think. I can      13 get it.</p>	<p>9 A I have.</p>
<p>14 Q Well --</p>	<p>10 Q Move to strike as nonresponsive.</p>
<p>15 A What I'm saying is you read -- I accepted your      16 reading of what the exact language is. My      17 interpretation of that language and I believe      18 any reasonable physician's interpretation is      19 that the judge is not telling the provider      20 exactly which medication to provide, but      21 instead is saying that the patient is to follow      22 their doctor's instructions.</p>	<p>11 Does the judgment of conviction read      12 "Take all prescribed medications"?      13 MS. SCHNEIDER: Are you asking him      14 what the document says? He can say what the      15 document says, but he's already told you his      16 interpretation of it. Go ahead and answer.</p>
<p>23 Q So Exhibit 10, page 2, Judgment of Conviction.      24 Do you see where it says take all prescribed      25 medications?</p>	<p>17 THE WITNESS: I agree that is the      18 words that are on that paper.</p>
	<p>19 BY MR. GAHNZ:</p>
	<p>20 Q Thank you.</p>
	<p>21 And that in this particular case did      22 not happen?</p>
	<p>23 MS. SCHNEIDER: Object.</p>
	<p>24 BY MR. GAHNZ:</p>
	<p>25 Q Ms. Freiwald was -- did not take all prescribed</p>

	Page 94	Page 95
1	medications while she was in jail?	1
2	<b>A I --</b>	1
3	MS. SCHNEIDER: Object to the form.	2
4	MS. DOYLE: I'll join.	2
5	<b>THE WITNESS: I'm sorry. I didn't</b>	3
6	<b>mean to jump on top.</b>	Counsel?
7	<b>My interpretation of this court</b>	4
8	<b>order is that Dr. Fatoki followed this court</b>	5
9	<b>order even though he wasn't aware of it. I</b>	6
10	<b>didn't see any evidence in the record that he</b>	7
11	<b>was aware of it. And these are common court</b>	8
12	<b>orders, and physicians who work in jails are</b>	9
13	<b>familiar with these type of court orders. And</b>	10
14	<b>my interpretation is that he followed the</b>	11
15	<b>spirit of this court order. Well, he -- it</b>	12
16	<b>wasn't ordered to him. So, in other words, it</b>	(Last question read.)
17	<b>wasn't ordered to him. It was ordered to</b>	13
18	<b>Ms. Freiwald.</b>	14
19	BY MR. GAHNZ:	MS. SCHNEIDER: Same objections. Go
20	Q Right. And that's my point.	ahead.
21	And Ms. Freiwald did not take all of	15
22	the prescribed medications while she was at	16
23	Brown County Medical -- at Brown County Jail?	17
24	MS. SCHNEIDER: Object to the form.	18
25	MS. DOYLE: I'll join.	19
		20
		21
		22
		23
		24
		25
		Page 96
1	<b>first few days because she didn't bring them in</b>	1
2	<b>with her, but she did take them starting on the</b>	2
3	<b>31st.</b>	3
4	BY MR. GAHNZ:	<b>continuing prescriptions from the outside</b>
5	Q Did she take gabapentin at all while she was at	<b>rather than discontinuing it, but yes, I</b>
6	the Brown County jail?	<b>understand.</b>
7	<b>A I don't know that for certain. I know that she</b>	4
8	<b>was not provided it by the Brown County Jail.</b>	Q What is the difference between not continuing
9	Q Did she take clonazepam while she was at the	5
10	Brown County Jail?	and discontinuing?
11	<b>A I know that she wasn't provided it by them. I</b>	6
12	<b>don't know whether she might have taken it when</b>	<b>Well, with regard to the gabapentin as an</b>
13	<b>she was out or not.</b>	<b>example, he didn't say we were not going to --</b>
14	Q And if she did take it while she was out, she	<b>we were going to discontinue it and never give</b>
15	would be in violation of jail policy, correct?	<b>it to her again. He said we're not going to</b>
16	<b>A I don't remember the exact policy, but yes,</b>	<b>provide it right now until we determine --</b>
17	<b>most jails and I think the Huber center had a</b>	<b>until we get medical records and find out why</b>
18	<b>policy that you weren't to take medications</b>	<b>she was provided it. So he didn't say that he</b>
19	<b>which weren't prescribed, yes. I would be</b>	<b>was never giving it again. He just did not</b>
20	<b>surprised if they didn't, but I don't recall it</b>	<b>continue it on his initial orders. Same with</b>
21	<b>exactly.</b>	<b>the clonazepam.</b>
22	Q So I want to talk about Dr. Fatoki and his	16
23	decision to discontinue gabapentin and	Q What records are you relying on for the
24	clonazepam, okay? Are you with me?	17
25	<b>A I am. I would characterize it as his not</b>	18
		19
		20
		21
		22
		23
		24
		25

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1 temporary as opposed to permanent cessation of 2 gabapentin?	1 A Well, that and Dr. Fatoki's testimony that he 2 asked the nurse -- or that both he and the 3 nurse said that he asked to get the records to 4 find out why it was being prescribed. 5 So once he found out why it was 6 being prescribed, he might restart it or he 7 might leave it discontinued.
3 A Well, number -- so two things. First of all, 4 Dr. Fatoki was on the phone speaking with the 5 nurse. So the nurse was documenting what 6 Dr. Fatoki's orders were. Dr. Fatoki was not 7 documenting contemporaneously. It was the 8 nurse that was documenting contemporaneously. 9 And yes -- so number two, it is a 10 normal custom and practice that one starts 11 medications when a person reports to jail and 12 makes changes as needed after that. So 13 that's -- that is just the usual custom and 14 practice of correctional health care.	8 Q Are you aware of CCS policy that requires a 9 doctor to give a written explanation if he 10 discontinues or doesn't approve a medication? 11 A If you would like to show me the particular 12 policy, I will be glad to interpret it. I 13 understand -- I hear what you're saying, and if 14 you want to show me that policy, I'll interpret 15 it. 16 Q Well, I'm not asking you to interpret it. I'm 17 asking you are you aware of such a policy, 18 whether it exists or not, sir?
15 Q Okay. 16 A And then further, referring back to that same 17 page we were on before, so it's CCS12, the 18 nurse makes the notation "Send ROI." So send 19 release of information. 20 Q So from the notation "Send ROI," which is 21 release of information -- 22 A Correct. 23 Q -- you are concluding that based on that 24 written record, that there was a possibility of 25 restarting these medications?	19 A I have reviewed the CCS policies, and I believe 20 I recall the language that you're describing as 21 part of an entire policy. So if you want to 22 show it to me, I'll be glad to give you my 23 opinion on it. 24 Q Let me ask you it this way: In review of any 25 of the materials that you were provided in this
Page 100	Page 101
1 case, did Dr. Fatoki provide any written 2 explanation as to why he did not approve the 3 continuation of gabapentin for Ruth Freiwald? 4 MS. SCHNEIDER: Object to the form. 5 THE WITNESS: Well, it is my 6 understanding that Dr. Fatoki was on the 7 telephone with the nurse and that therefore he 8 wouldn't be able to document anything until he 9 next came to the facility. And he was next at 10 the facility after Ms. Freiwald had died and 11 did not provide any -- would not be -- it would 12 be normal not to write on a chart after a 13 person's death, so I don't think he had an 14 opportunity to provide that ex- -- explanation. 15 BY MR. GAHNZ: 16 Q Have you finished your answer? 17 A I have. 18 Q All right. My question, though, is a little 19 different. 20 Did you see any record where 21 Dr. Fatoki documented the reason that he did 22 not approve the continuation of gabapentin for 23 Ruth Freiwald? 24 MS. SCHNEIDER: Asked and answered. 25 THE WITNESS: I did not see that	1 documentation nor any other documentation from 2 Dr. Fatoki prior to Ms. Freiwald's death. 3 BY MR. GAHNZ: 4 Q Okay. With respect to Dr. Fatoki's decision 5 not to approve the continued use of clonazepam, 6 did you see any written explanation as to his 7 reasons for that decision? 8 A That is the same answer as the last one I just 9 gave, that I didn't see documentation of that 10 or anything else by Dr. Fatoki in the chart 11 prior to Ms. Freiwald's death. 12 Q So when Dr.-- 13 A By the way, I need -- I need to correct 14 something. I said before her death, but before 15 her suicide. He was in the facility before she 16 died. 17 Q Okay. What assessment of Ruth Freiwald was 18 made by Dr. Fatoki? 19 A A telephone assessment of her condition and 20 medications. 21 Q All right. When did he speak with her on the 22 telephone? 23 A I don't believe he did. He spoke with the 24 nurse. 25 Q Okay. So what is an assessment?

	Page 102	Page 103
1 A <b>A gathering of information.</b>		1 nurse had?
2 Q From whom?		2 A <b>He reviewed them over the phone with her. She had the prescription -- this -- on page 12.</b>
3 A <b>From all sources --</b>		3 <b>The prescriptions, the date, the pills left, et cetera.</b>
4 Q All right.		4
5 A <b>-- available.</b>		5
6 Q Was there any indication that Dr. Fatoki ever		6 Q And you're saying that's -- the document that
7 saw Ruth Freiwald before he made the		7 you're looking at is the medication
8 determination to not approve her gabapentin?		8 verification form, correct?
9 A <b>No. And -- and that would not be customary practice.</b>		9 A <b>Well, there's other medical records as well.</b>
10		10 Q Well, that's my -- did the nurse go through any
11 Q Was there any indication that he saw her before		11 of these records with Dr. Fatoki?
12 he made the determination not to continue the		12 A <b>It's my recollection from their deposition</b>
13 clonazepam?		13 <b>testimony that neither of them recall the</b>
14 A <b>No. And that would not be standard practice.</b>		14 <b>specifics of what they went over but that it</b>
15 <b>It would not be standard practice to see a</b>		15 <b>was their usual custom and practice to do so</b>
16 <b>person.</b>		16 <b>and to provide whatever necessary information</b>
17 Q So he didn't see her, he didn't talk to her on		17 <b>was to make the decision.</b>
18 the phone, correct?		18 So it's my understanding from their
19 A <b>Not to the best of my understanding.</b>		19 deposition testimony they didn't recall the
20 Q Did he review any medical records prior to		20 specifics.
21 making his decision?		21 Q Did they have any medical records for Ruth
22 A <b>I believe he spoke with the nurse. I don't --</b>		22 Freiwald?
23 <b>I believe he reviewed what medical records that</b>		23 A Yes.
24 <b>the nurse had.</b>		24 Q What medical records did they have of Ruth
25 Q How did he review the medical records that the		25 Freiwald's?
	Page 104	Page 105
1 A <b>The receiving -- the medical receiving screening done by the correctional officer.</b>		1 <b>specifics of the information exchanged, but it would be their custom and practice to provide any necessary information. And since that was available, it's quite likely that they did discuss that information.</b>
2		2
3 Q So is it your position that a correctional		3
4 officer can create a medical record?		4
5 MS. SCHNEIDER: Object to the form.		5
6 THE WITNESS: Well, it's		6 Q Well, did Nurse Jones document any of the
7 information. It's a jail chart, and it becomes		7 reasons that Dr. Fatoki gave as to why he
8 part of the medical record. Yes, the receiving		8 wasn't going to approve clonazepam or
9 screening is part of the medical record.		9 gabapentin?
10 BY MR. GAHNZ:		10 A <b>What she documented on this form is that the gabapentin was not approved by the physician and to send a release of information. What was documented on the clonazepam was that it was not approved by the physician, and the officers were notified to contact HSU with any withdrawal symptoms.</b>
11 Q All right. Other than the receiving screening		11 Q So other than that information that you just
12 and the -- and the medication verification		12 read to us, was there any other information as
13 form, what other information did Dr. Fatoki		13 to the thought process that Dr. Fatoki engaged
14 have when he made the decision not to approve		14 in when he determined not to continue the
15 the gabapentin and clonazepam?		15 gabapentin or the clonazepam?
16 A <b>Potentially the information that had been</b>		16 A <b>His deposition testimony.</b>
17 recorded by Nurse Dennisen on the -- on that		17 Q All right. And that was taken three years
18 receiving screening from the day before or from		18 after, right?
19 a couple of days before.		19
20 Q When you say "potentially" --		20
21 A <b>Well, that -- it was information that was</b>		21
22 available to the nurse that was speaking to		22
23 Dr. Fatoki.		23
24 Q Okay.		24
25 A <b>And the nurse and Dr. Fatoki don't recall the</b>		25 A <b>Something on that order, yes.</b>

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1 Q Okay. When Dr. Fatoki made the determination 2 to discontinue -- or to not continue the 3 gabapentin, did he know why Ruth Freiwald was 4 taking it?	1 Q Did he know -- did Dr. Fatoki know that Ruth 2 Freiwald suffered from severe depression and 3 anxiety when he made a decision not to continue 4 the clonazepam and the gabapentin?
5 A <b>I think the answer to that is certainly not,</b> 6 <b>and he was asking for a release of information</b> 7 <b>so he could find out.</b>	5 A <b>I believe it was his deposition testimony that</b> 6 <b>he knew that she had depression because she was</b> 7 <b>on fluoxetine which is an antidepressant. I</b> 8 <b>believe that -- clonazepam is quite often</b> 9 <b>prescribed for anxiety, so it would be -- not</b> 10 <b>be unreasonable that he made that conclusion,</b> 11 <b>but I don't recall what he said in his</b> 12 <b>deposition testimony about that.</b>
8 Q Did he know how long she had been taking it?	13 Q Okay. So at paragraph No. 12 you talk about 14 the sick call requests.
9 A <b>I don't see evidence of that.</b>	15 A <b>Excuse me, this is in my primary -- my report,</b> 16 <b>my Rule 26 report?</b>
10 Q All right. Did he know who had prescribed it?	17 Q Yeah, I'm sorry. I'm on page 20 of your 18 primary report.
11 A <b>I don't believe that was recorded by -- on this</b> 12 <b>form, so I don't believe it was provided to</b> 13 <b>him.</b>	19 A <b>I'm there.</b>
14 Q With respect to clonazepam, did Dr. Fatoki know 15 how long she had been on it?	20 Q And at point 12 you indicated that "The 21 symptoms which Ms. Freiwald described over the 22 weekend in her sick call requests were 23 nonspecific and were not indicative of 24 benzodiazepine withdrawal."
16 A <b>I don't see evidence on this record that he</b> 17 <b>did.</b>	25 Did I read that correctly first of
18 Q Did he know why she was on it?	
19 A <b>I don't see a diagnosis recorded on here.</b>	
20 Q Did Dr. Fatoki know prior to making his 21 determination to not continue the clonazepam 22 and the gabapentin that Ruth Freiwald had 23 attempted suicide in February of 2016?	
24 A <b>I believe it was his deposition testimony that</b> 25 <b>he did not know that.</b>	
Page 108	Page 109
1 all?	1 A <b>There is a -- there is a CIWA-B or</b> 2 <b>benzodiazepine that some people use, and some</b> 3 <b>people do use the CIWA score for</b> 4 <b>benzodiazepines. I do not because of the</b> 5 <b>nature of benzodiazepine withdrawal.</b>
2 A <b>You did.</b>	6 Q Is the CIWA scale B a generally accepted tool 7 for assessing symptoms of benzodiazepine 8 withdrawal?
3 Q Okay. What symptoms was Ms. Freiwald 4 describing over the weekend?	9 MS. SCHNEIDER: Object to the form.
5 A <b>I thought I had perhaps put the sick call</b> 6 <b>requests in there, but I did not.</b>	10 THE WITNESS: <b>I would not call it</b> 11 <b>generally accepted, and I do not use it in my</b> 12 <b>practice.</b>
7 The symptoms that she was 8 describing -- there are two sick call requests.	13 BY MR. GAHNZ:
9 They are HRVACCS18 and 17 in that order.	14 Q So because you don't use it, that's the basis 15 for your statement that it is not generally 16 accepted as a tool in the -- in assessing 17 benzodiazepine withdrawal?
10 Q Okay.	18 A <b>Well, I guess -- so I'm an addiction medicine</b> 19 <b>physician, and I have 20 years of practice</b> 20 <b>detoxing people. And so if I don't use it,</b> 21 <b>it's not accepted by me, and I would not say it</b> 22 <b>is widely used or widely accepted. Those are</b> 23 <b>the reasons that I don't think it is generally</b> 24 <b>accepted. It is not a widely used tool.</b>
11 A <b>Would you like me to read her complaints?</b>	25 Q Are you aware of whether or not Brown County
12 Q Rather than do that, is that the complaints 13 that you're referencing in paragraph 12 at 14 page 20?	
15 A <b>I believe so, but just let me -- yes.</b>	
16 Q What's the CIWA scale?	
17 A <b>That is -- CIWA stands for Clinical Institute</b> 18 <b>Withdrawal Assessment Scale. And it is a</b> 19 <b>rating scale to rate the severity of primarily</b> 20 <b>alcohol withdrawal symptoms.</b>	
21 Q Is it also used for benzodiazepine withdrawals 22 rating?	
23 A <b>It's not designed for that use, and I don't use</b> 24 <b>it for that purpose.</b>	
25 Q Okay.	

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1	uses the CIWA assessment scale?	1 for benzodiazepines, correct?
2 A	<b>The CIWA assessment? I didn't -- I believe I reviewed the CCS detox protocols, and yes, I do believe they use it. They may even use the benzo.</b>	2 A <b>Correct.</b>
3	(Exhibit No. 206 was marked.)	3 Q And we had established prior to that this was a
4	<b>THE WITNESS: By the way, we can answer this line of questioning, but at some point I need to go to the restroom just whenever we get to it.</b>	4 scale that was used by Brown County in its
5		5 benzodiazepine withdrawal protocol?
6	MR. GAHNZ: Let's do that. Do you want to break for lunch then too?	6 A <b>I didn't -- I didn't agree that that is so. I don't doubt it, but I don't recall specifically that Brown County and/or CCS uses this. I wouldn't doubt that they do. I'm not disputing you, I'm just not agreeing to it without --</b>
7	Let's go off the record.	11 Q So for purposes of these questions, can we assume that it is, in fact, something that is a screening tool used by Brown County?
8	THE VIDEOGRAPHER: We are off the record at 11:54 a.m. This is the end of disc number two in the deposition of Dr. Thomas Fowlkes.	14 A <b>Certainly.</b>
9	(Recess taken, 11:54 a.m. to 12:40 p.m.)	15 Q Okay.
10	THE VIDEOGRAPHER: We are back on the record at 12:40 p.m. This is the beginning of disc number three in the deposition of Dr. Thomas Fowlkes.	16 A <b>And are you making a distinction by Brown County as opposed to the CCS providers at Brown County or --</b>
11		19 Q I'm saying the CCS providers at Brown County.
12	BY MR. GAHNZ:	20 A <b>Okay.</b>
13	Q Doctor, before the break I had handed you Exhibit 206, which is the CIWA assessment scale	21 Q I understand that you don't use this particular scale in your -- in your practice, correct?
14		23 A <b>That is correct.</b>
15		24 Q All right. Are you familiar with it however?
16		25 A <b>I am.</b>
	Page 112	Page 113
1 Q	All right. What are -- in the left-hand column on the three pages what are -- what is the purpose of those questions?	1 <b>for benzodiazepine withdrawal, and these are questions that are felt to be related to benzodiazepine withdrawal, yes.</b>
2 A	<b>These are questions which are to be asked by the rater, by the person who is filling out the scale. And then they are to -- on each question they are to score an answer from zero to 4 depending on the response of the person.</b>	4 Q Do you take issue with any of the signs that are listed in Exhibit 206?
3		6 A <b>I take issue with two things about this scale, and I'll just tell them to you briefly.</b>
4	<b>And these are all I believe -- these are all questions. What I mean by that is, some scales -- some scales have observations as well, but these are all questions and answers.</b>	8 <b>Number one, many of these symptoms are nonspecific, meaning that they are present in a lot of other conditions besides benzodiazepine withdrawal. That's one problem I have with them in general.</b>
5		13 Q Sure.
6		14 A <b>And the second is that the most dangerous withdrawal symptom of benzodiazepine is seizures --</b>
7		17 Q Okay.
8		18 A <b>-- which is unrelated to the severity of symptoms. So, in other words, this does not predict who is or is not going to have a seizure. That is another problem I have with the scale in general.</b>
9		23 Q Is there another assessment tool that is, in your opinion, generally accepted by the medical community to assess benzodiazepine withdrawal?
10 A	<b>According to this scale.</b>	
11 Q	Okay. And so do you know whether the questions in the left-hand -- kind of the first column on each of these three pages are asking about symptoms that are related -- that are known symptoms of benzodiazepine withdrawal?	
12		
13 A	<b>Well, without stating the obvious, it's a scale</b>	

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<p>1 A In my opinion, there is not. That is, there is 2 not a good assessment scale for 3 benzodiazepines -- or not a better. There's 4 not a better one. Some people use this. I do 5 not use it because I don't believe it is very 6 accurate.</p> <p>7 Q But as far as you're aware, there is no other 8 scale that's in existence with respect to 9 benzodiazepine withdrawal?</p> <p>10 A That would be better or in use more, no, that's 11 correct. You are correct.</p> <p>12 Q All right. Early on in your report you talk 13 about in the scope of your -- let me pull it up 14 here -- scope of report how Ms. Freiwald's past 15 medical history and mental health conditions 16 influenced these opinions.</p> <p>17 And what was it about Ms. Freiwald's 18 past medical history that impacted -- or 19 influenced any of your opinions?</p> <p>20 A Well, this is my -- the scope of the work I was 21 doing. So I was provided this kind of thing 22 before I was -- in other words, to -- and there 23 is one that -- that I am usually asked and 24 might have been asked in this case and didn't 25 put here, an autopsy finding.</p>	<p>1 So, in other words, I'm usually 2 asked how does a person's past medical history, 3 their autopsy findings influence my opinions. 4 That's part of the scope of work.</p> <p>5 Q Okay.</p> <p>6 A So, in other words, it could be the autopsy 7 wasn't in question or, in other words, we know 8 what the cause of her death was, but that's not 9 always the case.</p> <p>10 Q Okay.</p> <p>11 A So I'm usually asked to opine about that.</p> <p>12 Q Okay. So then I guess I'll ask it more 13 broadly.</p> <p>14 Was there anything about 15 Ms. Freiwald's past medical history that 16 influenced your opinions?</p> <p>17 A I would say yes in a general way. One of them 18 is that I have very limited past medical 19 records.</p> <p>20 Q Okay.</p> <p>21 A So I have -- I have very limited past medical 22 records.</p> <p>23 Number two, I saw that she had had a 24 serious suicide attempt in February of 2016 25 while she was taking both clonazepam and</p>
Page 116	Page 117
<p>1 gabapentin.</p> <p>2 Q Okay.</p> <p>3 A So -- and, I mean, there are other such -- I 4 mean, and she had the psychiatric history that 5 she had. So, yes, those impacted my opinion.</p> <p>6 She had very severe emotional 7 disregulation.</p> <p>8 Q And what do you base the severe emotional 9 disregulation conclusion on?</p> <p>10 A On the Prevea. Primarily on the Prevea. And I 11 may not be saying that correctly. Might be 12 some --</p> <p>13 Q P-R-E-V-E-A?</p> <p>14 A Correct. Prevea? Prevea? Whatever it's 15 pronounced. On those records.</p> <p>16 Q And those records are from the time frame of 17 March of 2016 through October of 2016?</p> <p>18 A Yes.</p> <p>19 Q Okay. Anything else that you base your 20 conclusion of emotional disregulation on?</p> <p>21 A Well, her suicide attempt in February was very 22 consistent with emotional disregulation. I 23 don't know that those -- that terminology was 24 used by the doctors who were caring for her at 25 that time.</p>	<p>1 Q Will you define emotional disregulation for me, 2 please.</p> <p>3 A Emotional disregulation is a mental health 4 symptom or condition, it's a sign -- so, in 5 other words, it's not a diagnosis -- that -- in 6 the best way that I can describe it in 7 nonmedical terminology, it is the inability to 8 normally regulate one's emotions as people 9 without that condition can.</p> <p>10 So, in other words, most -- it's an 11 inability to regulate normal emotions. The 12 emotions swing from -- wildly one way or the 13 other. It's often described as lacking 14 emotional skin or being an emotional burn 15 victim.</p> <p>16 So, in other words, I can give you 17 an example. In normal day-to-day interactions 18 with people we have -- we speak, we say hello 19 or whatever. If I don't speak to you today, 20 you don't take that -- you know, you are able 21 to determine that I might be in a bad mood or 22 might not like you or some other such thing.</p> <p>23 People with emotional disregulation 24 take those very small slights and become 25 severely agitated over them or they have wild</p>

		Page 118	Page 119
1	<b>emotional swings over what would be to the rest</b>	1	<b>section. Let me just make sure I'm -- okay.</b>
2	<b>of us normal interactions.</b>	2	Q Okay. So this is still part of 14, correct?
3	Q Is that a DSM diagnosis?	3	A <b>That is correct. In my opinions about the care</b>
4	A <b>It is not a diagnosis, as I said. It's not a</b>	4	<b>rendered by Dr. Fatoki in that section.</b>
5	<b>diagnosis. It is present in conditions. It is</b>	5	Q You're noted in that sentence that the BCJ
6	<b>a symptom that is present in conditions.</b>	6	receiving screening did not show an acute
7	Q All right. Was that something that was known	7	suicide risk.
8	to Dr. Fatoki in October of 2016?	8	What is an acute suicide risk?
9	A <b>I do not believe so.</b>	9	A <b>No evidence of present suicidal ideation or</b>
10	Q All right. Additional -- the previous suicide,	10	<b>intent. So, in other words, no evidence of --</b>
11	were any of the -- well, first of all, was	11	<b>present.</b>
12	the -- the fact that Ruth Freiwald had	12	Q What is nonacute suicidal?
13	attempted suicide known to Dr. Fatoki?	13	A <b>A better terminology would be previous suicide</b>
14	A <b>I believe he testified in his deposition he did</b>	14	<b>attempt or prior. So prior suicidal actions,</b>
15	<b>not know that.</b>	15	<b>which is what Ms. Fatoki [sic] had --</b>
16	Q Okay. And this may seem a little obvious, but	16	Q I'm sorry?
17	given the fact that he didn't know about the	17	A <b>Which is what she had. She had a prior suicide</b>
18	previous suicide, it's also fair that he didn't	18	<b>attempt, but no current ideation or intent.</b>
19	know the method by which she attempted suicide,	19	Q All right. So pursuant to the NCCHC, would you
20	correct?	20	agree that at the point that Ms. Freiwald
21	A <b>I believe that is correct.</b>	21	checked into the Brown County Jail, she was a
22	Q Okay. So at page 22, the first sentence of the	22	nonacutely suicidal inmate?
23	first full paragraph --	23	A <b>I don't -- I don't know whether I would agree</b>
24	A <b>Okay, I want to see which section this is. I'm</b>	24	<b>with that language or not without reviewing the</b>
25	<b>sorry, this is just my general opinions</b>	25	<b>policy.</b>
		Page 120	Page 121
1	Q Okay. So there's a definition at page 39	1	<b>NCC -- NCCHC Standards for Health Services in</b>
2	that -- of nonacutely suicidal. And I think it	2	<b>Jails. This is the 2018 edition, which is not</b>
3	tracks with what you just told us. So if you	3	<b>the edition that I reviewed in this case.</b>
4	could read that into the record, that would be	4	BY MR. GAHNZ:
5	great.	5	Q Okay.
6	MR. SALEMI: Could we see it first,	6	A <b>Well, it's not the -- it's not the edition that</b>
7	please. Thank you.	7	<b>was in place at this time, 2016. That would be</b>
8	<b>THE WITNESS: Your instruction or</b>	8	<b>the 2014 edition.</b>
9	<b>your question was for me to read that; is that</b>	9	Q Did they change the definition of nonacutely
10	<b>correct?</b>	10	suicidal?
11	BY MR. GAHNZ:	11	A <b>I don't know without comparing them. So this</b>
12	Q The definition of nonacutely suicidal, please.	12	<b>is -- I mean --</b>
13	MS. SCHNEIDER: Can you just have	13	Q Fair enough.
14	him identify the exact? I don't know that we	14	MR. SALEMI: And show a continuing
15	did the number of them.	15	objection to you using the 2018 standards from
16	BY MR. GAHNZ:	16	the NCCHC as irrelevant, but you can go ahead.
17	Q Sure. If you would start by identifying which	17	MS. SCHNEIDER: I'll join.
18	standard we're looking at.	18	<b>THE WITNESS: Okay. So the edition</b>
19	A <b>This is J-B-05, Suicide Prevention and</b>	19	<b>that I reviewed and the edition that was in</b>
20	<b>Intervention in the middle of page 39,</b>	20	<b>effect at this time was 2014.</b>
21	<b>Definitions --</b>	21	BY MR. GAHNZ:
22	MR. SALEMI: Doctor, before you do	22	Q All right. Do you have that -- where is that
23	that, could you read the cover, too, and what	23	book?
24	year that is?	24	A <b>Where is the book?</b>
25	THE WITNESS: Yes. This is the	25	Q Yes, sir.

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1 A <b>On my book shelf in my office.</b>	1 tell you.	
2 Q All right. So that's one of the documents that	2 BY MR. GAHNZ:	
3 is not part -- you did not bring that with you	3 Q And I'll tell you it's much easier to use the	
4 to your deposition today?	4 touch screen.	
5 A <b>That's not true.</b>	5 A <b>Okay. Oh, it's like literally the whole thing.</b>	
6 Q Okay. May I have it?	6 G -- I'm sorry. It's J-G-05, Suicide	
7 A <b>Yes. That's the documents.</b>	7 Prevention Program.	
8 Q So this is the 2014 edition?	8 Q Okay.	
9 A <b>Amongst -- amongst a bunch of other documents.</b>	9 MR. SALEMI: Thank you.	
10 Q All right. Okay. So I'm going to show you --	10 THE WITNESS: And it is on page 119.	
11 and feel free to scroll up and down on my	11 "NCCCHC's definition of nonacutely suicidal	
12 computer, it's a touch screen, if you would	12 (potential or inactive) inmates are those who	
13 like -- the standard for nonacutely suicidal	13 express current suicidal ideation, for	
14 inmate as of 2014. Is that what I have up on	14 example, expressing a wish to die without a	
15 the screen?	15 specific threat or plan and/or have a recent	
16 A <b>It is.</b>	16 prior history of self-destructive behavior."	
17 Q And that's the set of standards that you relied	17 BY MR. GAHNZ:	
18 on, correct?	18 Q Based on that definition, was Ruth Freiwald a	
19 A <b>That is correct.</b>	19 nonacutely suicidal inmate when she checked	
20 Q All right. And so can you read that -- that	20 into the jail on October 27, 2016?	
21 definition?	21 A <b>No, she didn't meet even that definition. So</b>	
22 A <b>Okay.</b>	22 <b>she wasn't suicidal in that way at all no.</b>	
23 MR. SALEMI: Which standard again?	23 Q And one of the things that it says is recent	
24 What number?	24 suicide. "But demonstrate other concerning	
25 <b>THE WITNESS: I'll go to it. I'll</b>	25 behaviors" -- well, hang on a second. It says,	
Page 124		Page 125
1 "and/or have a recent prior history of	1 <b>for current.</b>	
2 self-destructive behavior."	2 Q It says and, slash, or. Does that make a	
3 Did Ruth Freiwald have a recent	3 difference to you? And I'll give it back to	
4 prior history of self-destructive behavior?	4 you. I don't mean to --	
5 A <b>So I disagree that she met that definition of</b>	5 A <b>I don't believe she met that criteria. I</b>	
6 <b>nonacutely suicidal at all.</b>	6 mean -- because I would say in that -- in that	
7 Q Okay.	7 way -- and so the "or" would be a recent prior	
8 A <b>But so one can -- that is a -- I guess that is</b>	8 history of self-destructive behavior. So, in	
9 a matter of judgment as whether -- as to	9 other words, I would interpret that to be I'm	
10 whether her suicide attempt six months prior	10 not suicidal today, but yesterday I was -- you	
11 meets the definition of recent or not.	11 know, I've just come from the hospital for a	
12 Q Okay.	12 suicide attempt. So something recent in -- my	
13 A <b>I would say not, but that's certainly subject</b>	13 definition of recent is not six months ago with	
14 <b>to argument.</b>	14 no current. No, I don't believe she meets that	
15 Q So reasonable minds could disagree?	15 definition.	
16 A <b>On whether a six-month-ago suicide attempt was</b>	16 Q Now, you had a chance to look at all of the --	
17 <b>recent or not, yes.</b>	17 the treatment records, right?	
18 Q And if one assumes that six months prior is	18 A <b>All of the ones that were provided to me.</b>	
19 recent, would you agree that Ruth Freiwald was	19 Q Right. And you saw a bunch of them from Dawn	
20 a nonacutely suicidal inmate when she checked	20 Vardis, right?	
21 in?	21 A <b>I saw a number of counseling sessions, yes.</b>	
22 A <b>No. Because the first definition says like</b>	22 Q Right. She had almost 50 counseling sessions	
23 <b>present thoughts of suicide. She had no</b>	23 between February and October, right?	
24 <b>present -- or no current suicidal ideation or</b>	24 A <b>I won't agree to that characterization of the</b>	
25 <b>intent. Her screening was entirely negative</b>	25 <b>number. I don't -- because I don't know. I'm</b>	

Page 126	Page 127
1 <b>not disagreeing with you. I'm simply saying</b> 2 <b>you say it's 50; I don't know the number.</b>	1   we've been talking about, sir. 2   MS. SCHNEIDER: Object as vague and 3   overly broad, but go ahead.
3   Q   All right.	4 <b>THE WITNESS: Okay. Well, two</b> 5 <b>different things. So you're asking me now how</b> 6 <b>recent would it have to be in order to meet</b> 7 <b>this definition, which, again, has nothing to</b> 8 <b>do with the opinion that I have here in my</b> 9 <b>report about her not having current suicidal.</b> 10 <b>So she did not have current suicidal ideation</b> 11 <b>or intent.</b>
4   A <b>It was a number of them.</b>	12 <b>She had a suicide attempt, a very</b> 13 <b>serious suicide attempt, approximately six</b> 14 <b>months prior. That is not recent in my</b> 15 <b>definition.</b>
5   Q   So I guess to meet the definition of "recent" 6    in your mind, how much time between the event 7    and the check-in would be required?	16   BY MR. GAHNZ: 17   Q   All right. Are you done with your answer?
8   A <b>Well, that wasn't the -- the question you asked</b> 9 <b>me before was did I think that she met --</b>	18   A <b>Yes.</b> 19   Q   Move to strike as nonresponsive.
10   Q   I understand.	20   The question is, how much time? A 21   week? A month? Two months? Three months? So 22   let me just finish the question. Had 23   Ms. Freiwald attempted suicide a month before 24   she was checked into jail, would that meet the 25   definition of nonacute suicide?
11   A <b>-- NCCHC's definition of nonacutely suicidal.</b> 12 <b>And according to this definition here, I don't</b> 13 <b>believe that she did.</b>	Page 128
14   Q   And I absolutely understand that --	1 <b>currently suicidal, which she was not, and in</b> 2 <b>your hypothetical you haven't told me anything</b> 3 <b>differently about.</b>
15   A <b>Okay.</b>	4   Q   If she's currently suicidal, doesn't that 5    change her to the acutely suicidal definition 6    as opposed to the nonacutely suicidal?
16   Q   -- and we're on to the next question.	7   A <b>No. Because this says nonacutely suicidal,</b> 8 <b>in- -- there's something that's gotten in the</b> 9 <b>way -- inmates who express current suicidal</b> 10 <b>ideation without a specific threat or plan.</b> 11 <b>So, in other words, vague present suicidal</b> 12 <b>ideation, no intent or plan.</b>
17   A <b>And would you please repeat that question?</b>	13   Q   All right. So --
18   Q   Sure.	14   A <b>So acutely suicidal is present ideation with --</b> 15 <b>with plan --</b>
19        In order to be in your mind a recent 20    suicide or self-destructive behavior, how much 21    time would you allow to lapse between the event 22    or the self-destructive behavior and the 23    check-in to jail?	16   Q   Okay.
24   A <b>In what context?</b>	17   A <b>-- or intent.</b>
25   Q   In the context of meeting the definition that	18   Q   So you won't give -- if Ruth Freiwald had 19    attempted suicide in the exact same manner that 20    she did in February of 2016 two weeks before 21    she checked into the jail, you're not willing 22    to say that that's a recent suicide or 23    self-destructive behavior?
26	24   A <b>No. What I said was that when you go much</b> 25 <b>beyond a week or so, then it depends on the</b>

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<p>1 other circumstances, how serious the attempt  2 was, what treatment they have received in the  3 meantime, whether they were, you know, now  4 judged stable by another mental health  5 professional. All those kinds of factors come  6 into it which are all hypothetical and don't  7 apply in this case.</p> <p>8 Q Did anybody from Nurse Jones, Nurse Blozinski,  9 or Dr. Fatoki go through the analysis that you  10 just went through to determine whether or not  11 Ruth Freiwald was nonacutely suicidal when she  12 checked into the jail?</p> <p>13 MR. SALEMI: Object to form.</p> <p>14 MS. SCHNEIDER: Join.</p> <p>15 <b>THE WITNESS: So it was my  16 understanding that the suicide screening was  17 done by a correctional officer, and  18 Ms. Freiwald was allowed to go to the Huber  19 center. And so that was done on the night of  20 her intake, and those nurses that you just  21 described were not present on that night.</b></p> <p>22 BY MR. GAHNZ:</p> <p>23 Q Same with Dr. Fatoki, correct?</p> <p>24 A <b>Correct.</b></p> <p>25 Q And as far as you know -- well, let me back up.</p>	<p>1 It's also true that neither  2 Dr. Fatoki, Nurse Jones, nor Nurse Blozinski  3 ever reviewed the suicide screening to make the  4 determination as to whether or not Ruth  5 Freiwald was either acutely or nonacutely  6 suicidal?</p> <p>7 A <b>I believe that was their deposition testimony.</b></p> <p>8 Q All right. No. 15, your opinion is that  9 Ms. Freiwald's suicide on 11/2/2016 was neither  10 reasonably foreseeable nor preventable by  11 Dr. Fatoki or the CCS staff; is that correct?</p> <p>12 A <b>That is correct.</b></p> <p>13 Q What is your basis for this opinion?</p> <p>14 A <b>My basis for this opinion is that there is no  15 indication in the records that I reviewed that  16 either Dr. Fatoki or the CCS nurses were aware  17 of any suicidal ideation, any suicidal actions,  18 any suicidal statement, or any behaviors by  19 Ms. Freiwald which would indicate to them or to  20 reasonable providers that she was at risk of  21 suicide on that day.</b></p> <p>22 Q All right. What about at any time between her  23 entry into the jail and November 2nd?</p> <p>24 A <b>That opinion still applies.</b></p> <p>25 Q All right. And --</p>
Page 132	Page 133
<p>1 A <b>Or I should say that I have that opinion for  2 that whole period of time.</b></p> <p>3 Q Okay. I just wanted to make sure that we  4 were -- is there any other basis for that  5 opinion?</p> <p>6 A <b>The records and the deposition testimony  7 that --</b></p> <p>8 Q Anything in specific that you can point us to?</p> <p>9 A <b>Well, as a for instance, the -- Dr. Fatoki said  10 he -- he had no information that she was  11 suicidal; the nurses, the same thing, they had  12 no information that she was voicing suicidal  13 ideation or intent while she was at the Huber  14 center or anytime she was at the jail.</b></p> <p>15 Q All right. In looking at your 50-odd pages of  16 report I didn't see anything in there about  17 blood pressure monitoring. Did I miss that?</p> <p>18 A <b>Did you -- first -- first of all, what do you  19 mean? Yes, I saw where the nurse who reviewed  20 her screening form said that -- noted that  21 Mrs. Freiwald was on blood pressure medicine  22 and said that she should have blood pressure  23 checks, yes.</b></p> <p>24 Q Is that anywhere in your 50-odd pages of your  25 report?</p>	<p>1 A <b>Let's see. It was contained on that screening  2 form, on the notation by I believe it was Nurse  3 Dennis.</b></p> <p>4 Q Okay.</p> <p>5 A <b>And the copy that I have doesn't have the  6 handwritten part.</b></p> <p>7 Q Okay. So -- and that would have been part of  8 the information that was provided to you, was  9 that there had been an order for blood pressure  10 checks for three -- three straight days, right?</p> <p>11 A <b>I don't know if one would classify that as an  12 order. I don't believe it was given by a  13 provider. I believe that there might -- I  14 believe that the nurses and perhaps  15 Dr. Fatoki -- although I don't believe he  16 commented on it directly -- was that -- that  17 there was sort of a standing policy or protocol  18 to check blood pressure medicine on people who  19 came into the jail but without their blood  20 pressure medicine. So that was a standard  21 practice of theirs.</b></p> <p>22 Q Were there any blood pressure checks that were  23 done on Ms. Freiwald?</p> <p>24 A <b>No, because she didn't remain at the Brown  County Jail. She went to the Huber center</b></p>

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1 <b>where there's not normally a nurse stationed.</b>	1   Q   Is there any indication that a blood pressure	
2   Q   So should there have been blood pressure checks	2   check of any sort was ever done?	
3   done?	3   A <b>There is not.</b>	
4   A <b>No.</b>	4   Q   If somebody had done a blood pressure check on	
5   Q   All right. How come?	5   Ruth Freiwald, would you anticipate that there	
6   A <b>Well, number one, Ms. -- Ms. Freiwald didn't</b>	6   would be a notation of that?	
7 <b>bring her medication, so she wasn't on her</b>	7   A <b>I -- I would believe that there would be, yes.</b>	
8 <b>medications. When her medications were</b>	8   Q   All right. Based on the medical slip that you	
9 <b>received, they were approved and started, and</b>	9   have in front of you, did that trigger any sort	
10 <b>the nurse over the weekend made an appointment</b>	10   of requirement for any HSU staff to go see	
11 <b>to assess Ms. Freiwald the next time that there</b>	11   Ms. Freiwald?	
12 <b>was nursing sick call there or something -- or</b>	12   A <b>No.</b>	
13 <b>see a provider. I forget the exact language.</b>	13   Q   How come?	
14   Q   Where is that?	14   A <b>Well, for one thing, this request was written</b>	
15   A <b>HRBACCS000018.</b>	15 <b>on 10/28 at 5:00 p.m., which I believe was</b>	
16   Q   Okay.	16 <b>Friday at 5:00 p.m. It was responded to the</b>	
17   A <b>The response of the nurse on 10/29 was "Next</b>	17 <b>next day. And at that time they had</b>	
18 <b>available appointment with HSU for blood</b>	18 <b>Ms. Freiwald's blood pressure medications which</b>	
19 <b>pressure check. Meds to be reviewed with M.D."</b>	19 <b>they reviewed with Dr. Fatoki. And he issued</b>	
20   Q   So do you know whether an appointment was	20 <b>the orders, and they sent them to the Huber</b>	
21   actually made?	21 <b>center the next day, on Sunday. So they did</b>	
22   A <b>I do not.</b>	22 <b>make a response. Their -- I mean, their</b>	
23   Q   Do you know when the next time HSU staff went	23 <b>response was starting her on her blood pressure</b>	
24   to the Huber facility?	24 <b>medicine.</b>	
25   A <b>I do not.</b>	25   Q   My question is a little bit different, that	
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1   it's your opinion that the request for medical	1   that request, correct?	
2   care did not trigger a requirement by any HSU	2   A <b>Well, I think it is an overall correctional</b>	
3   staff to go see Ms. Freiwald?	3 <b>health care -- so delivery of care issue. I</b>	
4   MS. SCHNEIDER: Asked and answered.	4 <b>I believe it's within that area of expertise. A</b>	
5 <b>THE WITNESS: That is correct, to go</b>	5 <b>nurse might well be able to opine about that,</b>	
6 <b>see her in person. They took action by</b>	6 <b>yes.</b>	
7 <b>starting her on her blood pressure medicine,</b>	7   Q   And Nurse Ward opined that upon receipt of the	
8 <b>which was appropriate.</b>	8   October 28, 2016, medical request, that HSU	
9   BY MR. GAHNZ:	9   staff was required by nursing standards to go	
10   Q   All right. And can you point to any standard	10   see in person Ms. Freiwald. Is that your -- is	
11   that supports that opinion?	11   that a fair recitation of one of her opinions?	
12   MS. SCHNEIDER: Object to the form,	12   MR. SALEMI: I'll object to form,	
13   but go ahead and answer it if you can.	13   yeah, asking him to characterize another	
14 <b>THE WITNESS: I don't think that I</b>	14   witness's opinions. But you can if you can.	
15 <b>can. There aren't standards that address that</b>	15   MS. SCHNEIDER: And also just	
16 <b>specific issue. Sick call requests need to be</b>	16   objection. He hasn't seen the actual testimony	
17 <b>responded to, and hers was responded to. There</b>	17   of Nurse Ward. But go ahead if you remember	
18 <b>are standards that say that, but that's the</b>	18   the opinions from her report.	
19 <b>only standard I could point.</b>	19 <b>THE WITNESS: I don't recall it word</b>	
20   BY MR. GAHNZ:	20 <b>for word. I will take your word for it that --</b>	
21   Q   And this is something that would fall within	21 <b>I recall something very similar to that. I</b>	
22   nursing expertise, right?	22 <b>don't know that she had that very specific</b>	
23   A <b>No, I wouldn't say so.</b>	23 <b>opinion as you worded it, but I don't doubt</b>	
24   Q   Okay. Although a nurse has testified as to the	24 <b>that she has that opinion.</b>	
25   nursing standards that would apply to -- to	25	

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1 BY MR. GAHNZ:	1 A <b>Absolutely not.</b>
2 Q All right. And do you recall when you read her	2 Q Okay. And same question with respect to
3 reports that she cited to specific nursing	3 October 31st. Was that also a request for
4 standards, right?	4 medical care?
5 A <b>I recall she -- she had lots of opinions and --</b>	5 A <b>The request was actually not made on</b>
6 <b>yes, she cited lots of different standards. I</b>	6 <b>October the 31st. It was made on October the</b>
7 <b>might have commented about that specific one.</b>	7 <b>30th, Sunday.</b>
8 <b>Just a moment. If you could point me to that</b>	8 Q All right. On October the 30th did anybody go
9 <b>specific opinion of hers within her report, I</b>	9 see Ms. Freiwald?
10 <b>could comment.</b>	10 A <b>I believe that the nurses did not go to the</b>
11 Q No, I can't. I'm just asking you whether or	11 <b>Huber center but instead sent her blood</b>
12 not you're aware that she had cited to nursing	12 <b>pressure medications. In fact, that's what's</b>
13 standards with respect to that report -- or to	13 <b>documented.</b>
14 that opinion. And if you can't, that's fine.	14 Q Is it your opinion that the
15 I mean --	15 October 30th request did or did not require HSU
16 A <b>Well, if you'll give me just a moment, I will</b>	16 staff to go see Ms. Freiwald in person?
17 <b>review her report and see if I can find that</b>	17 A <b>Did not.</b>
18 <b>specific opinion and which standard. I don't</b>	18 Q And your basis for -- for that opinion is what?
19 <b>recall which standard she applied. That's what</b>	19 A <b>My more than 20 years of experience as a</b>
20 <b>I'm trying to determine.</b>	20 <b>correctional health care both provider and</b>
21 Q All right. So would you defer to Nurse Ward's	21 <b>administrator and medical director.</b>
22 nursing opinion with respect to whether or not	22 Q It's not based on any particular nursing
23 Blozinski and/or Jones or HSU was required to	23 expertise, though, correct?
24 see Ms. Freiwald after the -- receiving the	24 A <b>I have substantial experience training,</b>
25 10/28 medical slip?	25 <b>supervising, writing protocols for and</b>
Page 140	Page 141
1 <b>overseeing the practice of nurses in a health</b>	1 location?
2 <b>care setting.</b>	2 A <b>Well, I can't speak for Dr. Fatoki, but, I</b>
3 Q One of the things that you say at page 24 in	3 mean, I believe he should -- he was aware that
4 subsection B, 19(B) --	4 the Huber center was not located at the same
5 A <b>I'm there.</b>	5 place as the Brown County Jail, yes. I don't
6 Q -- was that "Ms. Freiwald was housed at a	6 know one way or the other, but it would seem
7 remote location that normally has relatively	7 reasonable that he would know that.
8 little interaction with the BCJ since inmates	8 Q Okay. Is high blood pressure a serious medical
9 at the Huber center go to outside providers."	9 condition?
10 Is that something that would have	10 MS. SCHNEIDER: Object to the form;
11 been known to Dr. Fatoki on October 27, 2016?	11 vague and overly broad.
12 A <b>What portion of that?</b>	12 <b>THE WITNESS: It can or cannot be.</b>
13 Q The whole thing.	13 <b>So it's not in every situation.</b>
14 A <b>Well, number one, Dr. Fatoki was the medical</b>	14 BY MR. GAHNZ:
15 <b>director of the Brown County Jail. I don't</b>	15 Q All right. And what makes high blood pressure
16 <b>know -- I mean, one would make a logical</b>	16 a serious medical condition?
17 <b>assumption that he knew how -- and, in fact, I</b>	17 A <b>The extent of its control or lack of control</b>
18 <b>think he testified at his deposition that he</b>	18 <b>and the complications related thereto.</b>
19 <b>knew that Huber center inmates were to go to</b>	19 Q Do you have an opinion as to whether or not
20 <b>outside providers. He was also responsible for</b>	20 Ms. Freiwald's high blood pressure was a
21 <b>authorizing what medicines would or wouldn't be</b>	21 serious medical condition?
22 <b>taken there, so yes, I think he was aware of</b>	22 A <b>I don't have any indication that it was. In</b>
23 <b>how health care was delivered at the Huber</b>	23 <b>other words, I have no evidence to show me that</b>
24 <b>center.</b>	24 <b>it was a serious medical condition. It</b>
25 Q And he was also aware that it was a remote	25 <b>needed -- it was a chronic medical condition</b>

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1 that needed treatment and was treated. 2 Q Okay. 3 A But I don't believe it was a serious medical 4 condition at the time she was at the Brown 5 County Jail.	1 believe you're referring to would be the 2 presence of anxiety after stopping antianxiety 3 medications. 4 Q Okay. Assume that that's what I'm talking 5 about.
6 Q You indicated -- and I think we've covered 7 this, but I just want to make sure -- that you 8 believe that the gabapentin was prescribed off 9 label for chronic pain. 10 Have we gone through the entire 11 basis of that belief?	6 A Right. That's -- I mean, that's -- that would 7 be relevant to this case.
12 A I think so. I will add, though, that it could 13 well have been prescribed for mood stabilizing 14 purposes or prescribed or continued by the 15 Prevea behavioral health care providers. In 16 other words, I'm not saying that they didn't 17 continue it because of its mood stabilizing 18 properties, but I don't believe it was 19 originally prescribed for that purpose. And I 20 certainly didn't see that it was prescribed for 21 seizures.	8 Q And when does that happen? 9 MS. SCHNEIDER: Object to the form 10 as vague and overly broad depending on the 11 circumstances, but go ahead.
22 Q All right. What is rebound anxiety? 23 A Well, there are -- there are probably multiple 24 definitions. It depends on what circumstance. 25 In this type of scenario what I	12 THE WITNESS: Exactly what she just 13 said. I can't tell you a specific time. I 14 mean, it depends on the circumstances.
1 dose.	15 BY MR. GAHNZ:
2 Number three, there was evidence in 3 the record that she was not taking it at the 4 dose -- at the dose that it had been 5 prescribed. So it was a low dose, and it was 6 appropriate to stop it suddenly with the -- 7 Also, Dr. Fatoki didn't just stop it 8 suddenly. He asked for him to be notified if 9 there were signs of withdrawal, which did not 10 occur.	16 Q Are you critical of Dr. Fatoki for abruptly 17 stopping the clonazepam? 18 A Not in this circumstance. 19 Q All right. How come? 20 A Because, number one, clonazepam is one of the 21 longer-acting benzodiazepines, and it has a 22 property where essentially it -- you can 23 self-taper. In other words, it can taper 24 itself off. 25 Number two, this was a very low
Page 144	Page 145
11 Q Okay. There were no signs of withdrawal? 12 A Well, he certainly wasn't notified of any signs 13 of withdrawal, and yes, there were no specific 14 signs of benzodiazepine withdrawal. 15 Q Now, when you give testimony in cases like 16 this, do you use the same set of standards and 17 rigor that you do when you're presenting to 18 doctors at conventions and other times when you 19 give presentations?	1 there's informal teaching, there's informal 2 lectures. So no, it doesn't have the same 3 rigor. 4 BY MR. GAHNZ:
20 MS. SCHNEIDER: Object to the form. 21 THE WITNESS: I'm not sure how to 22 answer that question. I mean, I -- I would say 23 that the preparation of a presentation no, does 24 not have the same degree of rigor as my 25 opinions here in this case. I mean, I teach --	5 Q All right. Can you point me to any literature 6 that supports the contention that it is 7 appropriate to stop a patient's use of 8 clonazepam without a taper abruptly? 9 A So I believe that what you're asking me doesn't 10 exist in the literature, in other words, that 11 it doesn't exist either way. There is no 12 literature that says this particular dose or 13 this particular length of prescribing or this 14 particular situation always requires tapering 15 or this other situation doesn't. So, in other 16 words, it's a case-by-case basis. It depends 17 on the length of time they've been prescribed 18 it, the dose they've been prescribed, and the 19 compliance with it. So there wouldn't be any 20 literature that would definitively set that 21 out. 22 Q Well, you would agree with me that there's a 23 fair number of warnings not to stop clonazepam 24 abruptly?
	25 MS. SCHNEIDER: Object to the form.

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1 <b>THE WITNESS: It shouldn't --</b>	1           MR. SALEMI: Thank you.	
2            MR. SALEMI: Presents an incomplete	2   BY MR. GAHNZ:	
3            hypothetical. You can answer.	3   Q   All right. So I'll move to strike as	
4 <b>THE WITNESS: It is generally a true</b>	4           nonresponsive.	
5 <b>statement that benzodiazepines which have been</b>	5           The question is, you teach doctors	
6 <b>prescribed over a long period of time and in</b>	6           not to stop benzodiazepines abruptly, correct?	
7 <b>high enough doses should not be stopped</b>	7           MS. SCHNEIDER: Asked and answered.	
8 <b>suddenly, that is correct.</b>	8 <b>THE WITNESS: So I you teach doctors</b>	
9   BY MR. GAHNZ:	9 <b>safe prescribing practices, which includes not</b>	
10   Q   And, in fact, that's -- you teach various	10 <b>stopping benzodiazepines suddenly when they</b>	
11            doctors not to abruptly stop benzodiazepines,	11 <b>have been prescribed in high doses over long</b>	
12            correct?	12 <b>periods of time, yes, that's correct.</b>	
13   A <b>There are safe tapering strategies, yes, that's</b>	13           (Exhibit No. 207 was marked.)	
14 <b>correct.</b>	14   BY MR. GAHNZ:	
15   Q   That wasn't my question though.	15   Q   Doctor, I'm showing you what we've marked as	
16            My question was, you teach --	16           Exhibit 207. Do you recognize this document?	
17            MR. SALEMI: Can you read that	17   A <b>I do.</b>	
18            question again, please.	18   Q   What is this document?	
19            (Last question read.)	19   A <b>This is a printout from a PowerPoint</b>	
20   BY MR. GAHNZ:	20 <b>presentation on benzodiazepines. One thing</b>	
21   Q   Can you answer that question, Doctor?	21 <b>that I will say is that -- that I'm not certain</b>	
22   A <b>Would you read back my answer?</b>	22 <b>of is what date. I had given a very</b>	
23            MR. SALEMI: Yeah, I'll ask that.	23 <b>similar-appearing presentation over a number</b>	
24            Would you please.	24 <b>of -- at a number of times, so I'm not sure</b>	
25            (Last answer read.)	25 <b>what date this was from.</b>	
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1   Q   Well, that's what I was going to ask you is	1    documents that were created by an expert in	
2    when -- when was this?	2    this case? I'm allowed to use documents to	
3   A <b>I don't know. I don't know where you obtained</b>	3    cross-examine the doctor. So you can make your	
4 <b>it from, so I don't know which one it is.</b>	4    objection, but I'll tell you that I found it	
5   Q   Well, I can tell you that it's at least past	5    when I was doing my research for this	
6    2016, because if you look at this Bachhuber	6    deposition, and I don't think there's any	
7    scale, B-A-C-H -- or Bachhuber scale,	7    responsibility that I had to provide	
8    B-A-C-H-H-U-B-E-R, it has a date of 2016 on it,	8    cross-examination documents to the other side	
9    correct?	9    prior to my cross-examination.	
10   A <b>Right. So it may be one of my more recent ones</b>	10    MR. SALEMI: Yeah, I disagree. I	
11 <b>from 2017 or '18. Since this incident.</b>	11           think once you developed this document -- once	
12            MR. SALEMI: I'm sorry, has this	12           you acquired it, that it was subject to the	
13            been disclosed?	13           pending document production demands and you are	
14            MR. GAHNZ: No.	14           obligated to supplement your disclosures. And	
15            MS. SCHNEIDER: Then show an	15           my objection is that you failed to do so.	
16            objection. We have document production demands	16           And I'm only doing that in a general	
17    on -- just for the purposes of my making my	17           sense because as I sit here, I didn't draft the	
18    objection and moving on, I believe we have	18           document production demands in this case, I'm	
19    document production demands -- although I'm a	19           not 100 percent positive that it is covered. I	
20    little late to this case -- that would have	20           believe the routine ones that myself and my	
21    covered production of documents such as this.	21           partner use it would have been covered, and so	
22            MR. GAHNZ: How would I have	22           I'm just making my objection.	
23    document -- how would I have the doctor's	23           MR. GAHNZ: So -- well, I'll	
24    documents in my possession? How would that be	24           respond. One, my mental impressions and my	
25    a plaintiff's responsibility to provide	25           research are work product and aren't -- and	

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1 aren't subject to disclosure. Two, it is 2 disclosed at this time, so -- which is prior to 3 trial, in the deposition. So given when your 4 experts provided their reports, it would 5 absolutely be a timely supplement today in any 6 event. But let's not waste a lot of record 7 time on this. Let's move on. 8                   MR. SALEMI: That's fine with me. 9                   MR. GAHNZ: Okay. 10 BY MR. GAHNZ: 11 Q All right. So one of the things that you put 12 in this PowerPoint is that you have nothing to 13 disclose in that you are not the biggest 14 advocate for benzodiazepine. That's at page 4. 15 A <b>That's not exact. I mean, you didn't exactly 16 state it correctly. I don't have anything to 17 disclose except perhaps to say I am not the 18 biggest fan of benzodiazepines.</b> 19 Q Thank you for that clarification. 20 A <b>And there is a further disclosure that some of 21 these opinions presented in this presentation 22 are my own opinion as opposed to information 23 from the literature.</b> 24 Q Fair enough. 25                   And as you go through this	1 PowerPoint, you put in parentheses those 2 opinions that -- you say "my opinion"? 3 A <b>I tried, yes.</b> 4 Q Okay. All right. 5 A <b>That's right.</b> 6 Q So I want to go to the benzodiazepines potency 7 page of the PowerPoint. It's about -- these 8 pages unfortunately are not numbered, so 9 it's -- 10 A <b>Okay.</b> 11 Q For your -- it looks like this. 12 A <b>Okay. I'm familiar with it. I'll try to get 13 to it.</b> 14                   MS. SCHNEIDER: How far into it 15 would you say it is? 16                   MR. GAHNZ: About halfway. 17 <b>THE WITNESS: I'm there.</b> 18 BY MR. GAHNZ: 19 Q What is the purpose of the Benzodiazepines 20 Potency slide? 21 A <b>Well, certain -- the page before that actually 22 has the same information in -- this bigger -- 23 it tells the pharmacokinetics of 24 benzodiazepines depend on their potency, their 25 onset of action, their duration of action,</b>
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1 <b>their lipophilicity. So the point is at 2 different characteristics that characterize how 3 benzodiazepines are handled by the body, how 4 they're metabolized and the effects on the 5 body.</b> 6 Q Okay. So the clonazepam dose that is shown 7 both on the pharmacokinetics properties of 8 benzodiazepine and the benzodiazepines' potency 9 page is .25 milligrams, correct? 10 A <b>That's correct.</b> 11 Q And is that because that's the standard dosage 12 for clonazepam? 13 A <b>No. It's -- it's the dose that's equivalent to 14 the standard that is used. If you go to the 15 second page, it shows it better.</b> 16 Q Okay. 17 A <b>Valium 5 milligrams. So, in other words, what 18 milligram is equivalent to 5 milligrams of 19 Valium for each of these benzodiazepines, not 20 that it's a standard dose. It's just a 21 equi- -- it's an equipotency table.</b> 22 Q And what's it -- I'm sorry, you said what was 23 the drug that it was based off of? 24 A <b>Valium, the top one. Diazepam.</b> 25 Q Okay. And it's your understanding that -- or	1 what's your understanding as to the dosage that 2 Ms. Freiwald was receiving for clonazepam? 3 A <b>I believe it was 1 milligram at nighttime and a 4 half a milligram as needed. I don't know that 5 it had a particular hour instruction on there. 6 I don't believe that was written. At least the 7 way -- I don't know if it was on the label, but 8 it wasn't written on the form. 9                   <b>So a dose of 1 milligram a day, 10 which is a relatively low dose.</b> 11 Q And that would be equivalent to 20 milligrams 12 of Diazepam? 13 A <b>That's correct.</b> 14 Q Okay. So a couple pages in past that, two 15 pages past that, you have a special note. 16 What -- what's going on on this page? 17 A <b>Let me get to it. Let me get to the page. 18                   Special note non- -- this page?</b> 19 Q Yeah, the non-U.S. benzo. 20 A <b>Okay.</b> 21                   MS. SCHNEIDER: Are you asking him 22 what his intent was in creating this slide for 23 this specific presentation? 24                   MR. GAHNZ: Right. 25                   <b>THE WITNESS: Okay. It is that</b></b>

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<p>1 there exists a benzodiazepine that's not  2 available in the United States. It's called  3 flunitrazepam. It goes by the brand name  4 Rohypnol in Mexico. And it's sold as a  5 hypnotic or a sleep medication, but it's used  6 as a date rape drug. It's called roofies. So  7 it's -- this is a special case. We can't  8 get -- we don't get it in America by the legal  9 market, but it's available on the street and  10 you have to watch out for it. It causes severe  11 amnesia.</p>	<p>1 subject to date rape. It's a very serious  2 condition.  3 Q Okay. Going back about six or seven pages,  4 Long-Term Use of Benzodiazepine.  5 Tell me when you get to that slide.  6 A Going back? How far back?  7 Q Towards the back of the page. It looks like  8 this.  9 MS. SCHNEIDER: Move --  10 THE WITNESS: I went the other --  11 I'm sorry, I went the wrong way.</p>
<p>12 BY MR. GAHNZ:  13 Q So down in the bottom right corner there's a  14 meme that reads: "Rohypnol - When Traditional  15 Dating Methods Aren't Just Cutting It."  16 Is that something that you put into  17 this presentation?</p>	<p>12 BY MR. GAHNZ:  13 Q Toward the back of the document.  14 A I'm sorry. My apologies.  15 MS. SCHNEIDER: What was it called  16 again?  17 MR. GAHNZ: Long-Term Use of  18 Benzodiazepines.</p>
<p>18 A Yes.  19 Q And why?  20 A Because I was trying to point out that roofies,  21 which are known as a date rape drug, are used  22 for these purposes. So this -- for instance,  23 this is a -- just came off the internet. It's  24 a guy holding an unresponsive female. So  25 roofies will make a person unresponsive and</p>	<p>19 THE WITNESS: How many pages going  20 back?  21 BY MR. GAHNZ:  22 Q Seven pages past the roofie meme.  23 A Okay. Okay. I'm there.  24 Q So long-term use is greater than eight to  25 twelve months?</p>
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<p>1 A Correct.  2 Q And who is Sadock, et al., 2009?  3 A Well, it -- that is a literature reference. I  4 don't know who Sadock is, but that's -- that's  5 a literature reference to an article or a  6 publication by Sadock from 2009.  7 Q All right. And the information that's  8 contained on this slide you derived from  9 reading this Sadock, et al. article?  10 A That's what this is in -- I don't know -- I  11 can't say that. I don't know whether it was an  12 article or chapter. I don't recall at this  13 moment. I don't have the reference list.  14 Let's see if the -- in the back. No, it's  15 Sadock, et al. Kaplan and Sadock's  16 "Comprehensive Textbook of Psychiatry,"  17 9th edition, in 2009.  18 Q And that's contained somewhere in the couple  19 pages where the references are?  20 A It's where the references are. So, yes, it's  21 what reference that is.  22 Q Okay. And so the question was, did you draw  23 the information contained in this PowerPoint  24 slide from this textbook?  25 A Well, that's what that reference is. I don't</p>	<p>1 recall doing that, but that's what the  2 reference means, yes.  3 Q Thank you. All right.  4 So long-term use is greater than or  5 equal to eight to twelve months; is that right?  6 A That's what this slide says, yes, and I agree  7 with that.  8 Q Okay. And Ms. Freiwald was on benzodiazepine  9 for -- benzodiazepines long term, correct?  10 A That's not correct.  11 Q That's not correct?  12 A That's not correct.  13 Q Okay. What about that is incorrect?  14 A Well, she was on benzodiazepines prior to her  15 suicide attempt in February.  16 Q Right.  17 A She had an overdose on benzodiazepines; they  18 were stopped. She was detoxed, so she was no  19 longer on them, and then they were restarted in  20 March.  21 Q Okay.  22 A And so March to October is less than eight to  23 twelve months. So she was not on long-term  24 benzos.  25 Q All right. Is there any documentation to show</p>

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1 that the benzodiazepine was out of her system 2 prior to it being restarted in March? <b>3 A I am not aware of any documentation of that.</b> <b>4 But based upon the time course, it would be my</b> <b>5 opinion based on my practice and experience</b> <b>6 they would have been out of her system.</b> 7 Q You are a pharmacology expert? <b>8 A No. I'm a board-certified addiction medicine</b> <b>9 doctor.</b> 10 Q All right. Did you do any sort of 11 pharmacological evaluation to determinate -- to 12 determine whether or not the benzodiazepines 13 that Ms. Freiwald ingested in February of 2016 14 were out of her system prior to restarting her 15 on benzodiazepines? 16 MS. SCHNEIDER: Beyond his education 17 and experience? <b>18 THE WITNESS: I never -- I never saw</b> <b>19 Ms. Freiwald, I never did any tests on her.</b> <b>20 And so I have no -- I didn't do any test to</b> <b>21 determine anything about her blood -- drugs in</b> <b>22 her system.</b> 23 BY MR. GAHNZ: 24 Q All right. It says that -- that 90 percent of 25 people that have been on long-term use of	1 benzodiazepine experience withdrawal symptoms 2 whether withdrawn slowly or rapidly; is that 3 correct? <b>4 A That is correct.</b> 5 Q What is the percentage for people that have not 6 been on benzodiazepines long term? <b>7 A I don't -- I don't know it, but general term it</b> <b>8 would depend on the specific length of time and</b> <b>9 the specific dosing.</b> <b>10 This is just discussing long-term</b> <b>11 use greater than eight to twelve months.</b> 12 Q Okay. All right. So if you go to Ways I Could 13 Impact My Practice. <b>14 A That's further back in the presentation, I</b> <b>15 believe?</b> 16 Q Yeah. It's about ten pages from the end. <b>17 A Okay. I'm there.</b> 18 Q All right. So what is the purpose of this 19 slide? What are you telling practitioners? <b>20 A That there are clinical practice guidelines.</b> <b>21 This is one example of them, but there are</b> <b>22 clinical practice guidelines and that -- this</b> <b>23 audience was a primary -- is a primary care</b> <b>24 audience. So, in other words, that was the</b> <b>25 main people that were the audience of this, and</b>
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1 <b>that they would do well, if they were going to</b> 2 <b>use benzodiazepines in their practice, to</b> 3 <b>follow these clinical guidelines about their</b> 4 <b>safe use.</b> 5 Q All right. And you point them to a file within 6 the jpshealthnet.org, right? 7 A <b>Yes. Simply as an example of one clinical</b> 8 <b>practice guideline.</b> 9 Q All right. And that's one that you believe is 10 appropriate for physicians to use, correct? 11 A <b>Yes. I believe I have snip-its from it further</b> 12 <b>over in the presentation.</b> 13 (Exhibit No. 208 was marked.) 14 BY MR. GAHNZ: 15 Q All right. I'm going to show you what we've 16 marked as Exhibit No. 208. And I'm going to 17 ask you is this the document that you referred 18 treating physicians to? 19 A <b>I don't recognize this as the exact document or</b> 20 <b>certainly not in this format.</b> 21 <b>You can tell if it's the same</b> 22 <b>document, because these are snips from it. So</b> 23 <b>if we find that snip, it will be the same</b> 24 <b>document, but I don't --</b> 25 Q Why don't you look at the bottom, all right?	1 Do you see where it says www.jpshealthnet.org.? 2 A <b>I do.</b> 3 Q Slash sites? 4 A <b>Right.</b> 5 Q Slash default? 6 A <b>I see that.</b> 7 Q Slash files, slash prescribe -- I want you to 8 compare Exhibit 208 to what is on the bottom -- 9 what is on your Ways I Could Impact My Practice 10 slide. 11 A <b>Okay.</b> 12 Q Okay. Take a look at them, and then tell me if 13 this is the document that you referred the 14 physicians to go look at. 15 A <b>Well, this is cut off. On the bottom of mine</b> 16 <b>they're cut off. In addition to that, just</b> 17 <b>because it's from the same site -- I don't know</b> 18 <b>how often JPS does or does not update. So, in</b> 19 <b>other words, I -- you only asked me was this</b> 20 <b>the exact one I downloaded and referred people</b> 21 <b>to, and I don't know whether it is or not. It</b> 22 <b>looks generally familiar, I just don't know</b> 23 <b>it's exactly the same one.</b> 24 Q Okay. Well, the title of this is "E-Resource 25 October 2014." Is that the same title that's

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1 on your slide?	1 didn't go to WebCash. I went directly to a
2 A <b>It appears to be.</b>	2 website. I don't know if this is the exact
3 Q And the title is called "Prescribing and	3 information or not.
4 Tapering Benzodiazepines." Correct?	4 You can tell the information from
5 A <b>It appears to be.</b>	5 what I printed because I used -- if you will go
6 Q And it's from the jpshealthnet.org., correct?	6 to the next few pages, there are snip-its or
7 A <b>It appears to be.</b>	7 these are -- I'm sorry, I don't -- I'm blanking
8 Q I guess I'm confused by -- why we're having a	8 on the word. Captures. Is that what you call
9 problem with you authenticating this document.	9 it? Capture from the document. These are
10 Is there some -- is there something that I can	10 captures from this document. So if you find
11 do to convince you that this is, in fact, the	11 that exact capture in here, then it's probably
12 document that you sent the doctors to in your	12 the same document. Do you see this page right
13 PowerPoint presentation?	13 here? It's a capture. So I just don't know.
14 MS. SCHNEIDER: Object to the form.	14 Q All right. So go --
15 MR. SALEMI: Yeah, I object. He's	15 A <b>It may well be.</b>
16 not required to authenticate the document. All	16 Q Let's go a couple pages in.
17 he's required to do is testify to what he	17 A <b>Okay.</b>
18 knows. You can answer.	18 Q So you have a long-term use discontinuation
19 <b>THE WITNESS: So before I did this</b>	19 letter.
20 presentation, I went to this website, and I'm	20 A <b>That's correct.</b>
21 quite sure at the time I printed it off. I	21 Q All right. And there is a long-term use
22 don't recall it looking in this exact format is	22 discontinuation letter contained within the --
23 what I'm telling you. I'm not saying if it is	23 at 11 of 13 of Exhibit 208, correct?
24 or is not the same exact information. I don't	24 A <b>Let's go look at it. Yes.</b>
25 recall it looking in this same format. I	25 And so as an example -- I'm not
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1 trying to be argumentative, I promise you. Do	1 just as many risks involved with abrupt
2 you see at the top long-term discontinuation	2 withdrawal of benzodiazepines as there are for
3 use letter? On my slide. On my slide right	3 using them for long-term use."
4 here.	4 Would you agree with that statement?
5 Q Yes.	5 A <b>I would.</b>
6 A <b>Do you see how it's underlined?</b>	6 Q Then on the right side on that same page
7 Q Yes.	7 there's a number of bullet points that talk
8 A <b>Okay. Do you see how it's not underlined over</b>	8 about tapering benzodiazepines; is that
9 <b>there. So it's not a capture of the same exact</b>	9 correct?
10 <b>document. And this is -- this is a capture of</b>	10 A <b>That's correct.</b>
11 <b>a document. It might be the same information.</b>	11 Q All right. And the first bullet point says
12 <b>I'm just saying this -- this document right</b>	12 that "You should attempt to decrease frequency
13 <b>here is not the same document, because the one</b>	13 and dosage for long-term users versus
14 <b>I -- the one I snipped from has an underline</b>	14 discontinuation." Correct?
15 <b>under that.</b>	15 A <b>That is what it says.</b>
16 Q All right.	16 Q And you would agree with that?
17 A <b>So I don't know if it's all the same</b>	17 A <b>Well, in a primary care setting, yes.</b>
18 <b>information or it's not. I just don't know one</b>	18 Q In what settings would you disagree with that?
19 <b>way or the other.</b>	19 A <b>In a jail setting -- in a jail setting in a</b>
20 Q All right.	20 <b>person who had not been using a high dose for a</b>
21 A <b>And -- well, that's all I can -- that's the</b>	21 <b>long period of time I would disagree with that.</b>
22 <b>best I can answer you.</b>	22 Q So in every other circumstance you would agree
23 Q All right. So let's look at 208.	23 with it, or are there other circumstances that
24 A <b>Okay. That's this document right here.</b>	24 you would disagree with it as well?
25 Q In the first paragraph it provides "There are	25 A <b>There might well be other times I would</b>

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1 <b>disagree with it as well.</b>	1 <b>circumstances, I might well taper that</b>
2   Q   But sitting here today, the only example that	2 <b>benzodiazepine off and/or monitor them for</b>
3   you can think of is that somebody that hasn't	3 <b>signs of benzodiazepine withdrawal.</b>
4   been on benzodiazepines long term and is in	4   BY MR. GAHNZ:
5   jail?	5   Q   Okay. In this case there was no tapering,
6 <b>A   So another -- so another scenario in which I</b>	6   correct, in Ms. Freiwald's case?
7 <b>would recommend discontinuation is -- versus,</b>	7 <b>A   That is correct.</b>
8 <b>you know, that I would recommend getting a</b>	8   Q   It also states that you should expect anxiety,
9 <b>person off of it is people with a history of</b>	9   insomnia, and resistance. Do you agree with
10 <b>substance use. You've come to -- you know, you</b>	10   that statement?
11 <b>have substance use, you're in my facility, then</b>	11   MR. SALEMI: I'll object to the
12 <b>I would -- I would get you off of them. I</b>	12   form. Presents an incomplete hypothetical.
13 <b>wouldn't -- I would not just decrease the</b>	13   It's irrelevant to the facts of the case. You
14 <b>frequency and the dosage in a person who had</b>	14   can answer.
15 <b>had a suicide attempt with benzodiazepines.</b>	15   MS. SCHNEIDER: Join.
16   MR. GAHNZ: I'm sorry, what was the	16 <b>THE WITNESS: I agree that that is</b>
17   last part of that answer?	17 <b>contained in this bullet point, yes.</b>
18   (Last part of answer read.)	18   BY MR. GAHNZ:
19   BY MR. GAHNZ:	19   Q   Okay. And would you expect that anxiety --
20   Q   In that circumstance would you take any	20   well, let me rephrase. Let me back up.
21   precautions with that patient?	21   Would you expect that a patient
22 <b>A   Yes.</b>	22   being tapered off of benzodiazepine slowly
23   MS. SCHNEIDER: I'm just going to	23   would have increased anxiety?
24   object as vague and overly broad. Go ahead.	24 <b>A   Yes.</b>
25 <b>THE WITNESS: Depending on the</b>	25   MR. SALEMI: Same objections.
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1   MS. SCHNEIDER: Join.	1   BY MR. GAHNZ:
2   BY MR. GAHNZ:	2   Q   Well, let me back up and see if I can ask the
3   Q   Would you expect that a person being abruptly	3   question.
4   taken off of a benzodiazepine would have	4   Does being tapered off of a
5   increased anxiety?	5   benzodiazepine increase a person's anxiety?
6   MR. SALEMI: Same objections.	6   MR. SALEMI: Same objections.
7   MS. SCHNEIDER: Join.	7   MS. SCHNEIDER: Join.
8 <b>THE WITNESS: You did a thing, so I</b>	8 <b>THE WITNESS: It's not designed to,</b>
9 <b>would expect both of them to have increased</b>	9   but I would expect the person to have increased
10 <b>anxiety, not necessarily more in the second</b>	10   anxiety. So tapering is not designed to
11 <b>scenario.</b>	11   increase anxiety or it's the not the purpose of
12   BY MR. GAHNZ:	12   it, but people who are -- who are getting off
13   Q   Okay. So the mere fact of being taken off of	13   benzodiazepines, whether being tapered or
14   benzodiazepine either gradually or abruptly is	14   whether being withdrawn -- whether it's stopped
15   going to increase a person's anxiety?	15   suddenly, are going to have increased anxiety,
16   MR. SALEMI: Same objections.	16   just like people in jail are going to have
17   MS. SCHNEIDER: Join.	17   increased anxiety. So those are --
18 <b>THE WITNESS: No. You rephrased the</b>	18   BY MR. GAHNZ:
19 <b>second one doing that would have a causation.</b>	19   Q   So would you expect that a person who is taken
20 <b>The first way you asked me was would I expect a</b>	20   off of a benzodiazepine abrupt- -- well, let me
21 <b>person who had been tapered off or was being</b>	21   rephrase the question.
22 <b>tapered off to have increased anxiety. So</b>	22   Does being taken off of a
23 <b>those are two different questions, a matter of</b>	23   benzodiazepine abruptly increase a person's
24 <b>causation.</b>	24   anxiety?
25	25   MR. SALEMI: Same objections.

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1	MS. SCHNEIDER: Same objection --	1	<b>going to after one night.</b>
2	join.	2	Q So in your opinion, is there any relation to
3	<b>THE WITNESS: Well, anxiety can be</b>	3	Ms. Freiwald's increased anxiety and the
4	<b>one of the benzodiazepine withdrawal symptoms,</b>	4	cessation of the clonazepam?
5	<b>so it would depend on the dose and the length</b>	5	MS. SCHNEIDER: Object to the form.
6	<b>of time the person had been on whether one</b>	6	<b>THE WITNESS: It is much more likely</b>
7	<b>would expect it. Given a high enough dose and</b>	7	<b>to be related to her circumstances and not</b>
8	<b>a long enough term, yes, one would expect it.</b>	8	<b>getting out than -- than it is to withdrawal --</b>
9	<b>Given a low enough dose and a low -- a short</b>	9	<b>withdrawal from benzodiazepines.</b>
10	<b>enough term one would not expect it.</b>	10	BY MR. GAHNZ:
11	BY MR. GAHNZ:	11	Q And I'll move to strike as nonresponsive.
12	Q Okay. And Ms. Freiwald, is it your opinion	12	My question was, is it your opinion
13	that her anxiety increased because of being	13	that the abrupt cessation of clonazepam had no
14	taken off of it abruptly by Dr. Fatoki?	14	role in Ms. Freiwald's increased anxiety?
15	A <b>It is my opinion that that is not the case.</b>	15	MS. SCHNEIDER: Object to the form.
16	Q All right. So her anxiety -- do you have an	16	<b>THE WITNESS: Well, my answer --</b>
17	opinion as to whether Ms. Freiwald's anxiety	17	<b>you -- I mean, it's responsive or it's not</b>
18	increased while she was in jail?	18	<b>responsive. It was -- her increased anxiety</b>
19	A <b>I would use the term that her emotional</b>	19	<b>and increased emotional disregulation were much</b>
20	<b>disregulation continued to have problems. She</b>	20	<b>more likely related to her underlying</b>
21	<b>had problems with emotional disregulation that</b>	21	<b>psychiatric condition and her being in jail and</b>
22	<b>is experienced by the person as anxiety. So,</b>	22	<b>not getting out than due to any benzodiazepine</b>
23	<b>yes, I agree that she felt more anxious while</b>	23	<b>withdrawal.</b>
24	<b>she was in jail most specifically related to</b>	24	BY MR. GAHNZ:
25	<b>her not getting out like she thought she was</b>	25	Q I understand that answer. My question is a yes
		Page 172	Page 173
1	or no question, and that's why I'm really	1	MR. SALEMI: Thank you.
2	struggling here.	2	So we're back on the record. I have
3	Is this a -- is this a question that	3	an objection. Go ahead if you can.
4	you can answer yes or no?	4	MS. SCHNEIDER: My objection is it's
5	A <b>I don't --</b>	5	asked and answered and he's explained it, but
6	MR. SALEMI: I'm sorry, could you	6	go ahead.
7	read it again, please, the question and the	7	MR. SALEMI: I agree. And I object
8	answer as well?	8	to the form, and I object to directing the
9	(Last question and answer read.)	9	witness to answer the question yes or no. I
10	MR. SALEMI: Thank you. Is there a	10	don't believe that the answer has to be in the
11	question pending? Did I cut one off or --	11	form of yes or no. I believe the answer was
12	MR. GAHNZ: You did.	12	reasonable, and it's been asked and answered.
13	MR. SALEMI: Okay. Do you want her	13	So those are my objections, but go
14	to repeat that and then I can state my	14	ahead.
15	objections?	15	BY MR. GAHNZ:
16	MR. GAHNZ: Yes, please.	16	Q Just so the record is clear, I move to strike
17	MR. SALEMI: Would you?	17	that last answer as nonresponsive and ask the
18	(Last question read.)	18	doctor are you able to answer that question yes
19	MR. SALEMI: I think there's more to	19	or no?
20	it.	20	MS. SCHNEIDER: Same objections.
21	MS. SCHNEIDER: I'm going to object	21	<b>THE WITNESS: I've given you the</b>
22	as asked and answered, but go ahead.	22	<b>best answer that I can.</b>
23	MR. SALEMI: Well, wait a sec	23	BY MR. GAHNZ:
24	though.	24	Q Okay. Same question with respect to
25	(Requested portion read.)	25	gabapentin. Is it your opinion that

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1 Ms. Freiwald's increased anxiety was in no way 2 related to the sudden cessation of gabapentin?	1 MR. GAHNZ: Your objection is to the 2 form of the question. The editorialing is 3 starting to be problematic to the point of 4 going to the judge. Coaching the witness on 5 the record is never acceptable. If you have an 6 objection to the form of the question, that's 7 fine. You realize, of course, that all of 8 your -- all of your objections are preserved 9 regardless of whether this is a video 10 deposition or not. So I will ask you very 11 nicely to please stop coaching the witness.
3 <b>A That is correct. That is my opinion.</b> 4 Q Okay. Going back to Exhibit 208. Are you with 5 me?	12 MR. SALEMI: And I'll indicate for 13 the record that in no way am I coaching the 14 witness. Your characterization is either 15 mis- -- either willfully or unintentionally 16 misinformed. My objections are absolutely 17 appropriate. And my objection in regard to the 18 use of this document in this hypothetical is 19 exactly the type of form objection that I'm 20 obligated to make in order to make sure I 21 preserve the issue. If you don't want me to 22 detail my objections to form, I guess I could 23 just make an objection to form if you'll agree 24 that you're not going to require any statement 25 from me in regard to how in form your question
6 <b>A I am.</b> 7 Q All right. One of the bullet points a little 8 bit farther down says, "The use of gabapentin 9 can be helpful in speeding up the tapering 10 process." Correct?	
11 <b>A That is what that bullet point says.</b> 12 Q You would agree with that?	
13 <b>A I would not.</b> 14 MR. SALEMI: And show an objection, 15 again, to form and foundation. It presents an 16 incomplete hypothetical. There's no context to 17 equating what's in Exhibit No. 207 to the 18 length of time taking and the dosage of 19 benzodiazepine which the deceased was on -- 20 MR. GAHNZ: Counsel, at this -- 21 MR. SALEMI: -- that the deceased 22 was on in this case.	
23 MS. SCHNEIDER: Join. 24 MR. SALEMI: And I would like to 25 show a continuing, but I just don't --	
Page 176	Page 177
1 is wrong and my objection will be preserved, 2 I'm fine with that.	1 <b>cases in which long-term use and high doses</b> 2 <b>have been provided.</b>
3 MS. SCHNEIDER: I'm going to join in 4 the objection.	3 <b>And it goes on to say there's a risk</b> 4 <b>of seizures and/or delirium that increases with</b> 5 <b>abrupt withdrawal. Those did not occur in this</b> 6 <b>case.</b>
5 BY MR. GAHNZ: 6 Q One of the things that --	7 BY MR. GAHNZ:
7 I'm sorry, is everybody done? 8 MS. SCHNEIDER: Um-hmm.	8 Q All right. At page 23.
9 BY MR. GAHNZ: 10 Q It indicates in this document that abrupt 11 withdrawal is not recommended. Would you agree 12 with that?	9 <b>A Of what document, please?</b>
13 <b>A Would you point to that?</b> 14 Q Sure. It's the second-to-last bullet point on 15 the first page of Exhibit 208.	10 Q Your report. I'm sorry. Are you ready?
16 MS. SCHNEIDER: I'm just going to 17 object to the form, vague and overly broad, but 18 go ahead.	11 <b>A I am.</b>
19 <b>THE WITNESS: Well, this document</b> 20 <b>speaks for itself, and I believe you did read</b> 21 <b>that language correctly.</b>	12 Q Under A, 19(A), you write that "Ms. Freiwald 13 failed to bring her medication with her when 14 she self surrendered. Had she done so, her 15 medications would have more likely than not 16 been available to her prior to the weekend."
22 <b>Do I agree with every clinical</b> 23 <b>statement of this practice guideline, no. And</b> 24 <b>abrupt withdrawal is not recommended in</b> 25 <b>cases -- I would add additional language in</b>	17 What is your basis for that?
	18 <b>A My basis for that is that inmates which are</b> 19 <b>reporting -- who are reporting to the Huber</b> 20 <b>center were instructed to bring their</b> 21 <b>prescription medications with them when they</b> 22 <b>reported to the main Brown County Jail. Had</b> 23 <b>she done so, usual custom and practice would</b> 24 <b>have been to verify and continue or discontinue</b> 25 <b>those medicines at that time, and she would</b>

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1 have had them from that night.	1 the friend who brought her. And they likely
2 The problem was she went to another	2 would have gone with her. Or might have been
3 facility, so she and the medicines were at two	3 made up -- I believe the nurses at the Brown
4 different facilities. They had to be verified	4 County Jail put those onto a -- a card, for
5 and then couriered, and a weekend intervened.	5 lack of a better term, the punch-out card, and
6 So had those -- had she brought them with her,	6 made an MAR. So they might have been sent the
7 she likely would have had them by at the very	7 next day.
8 least the next day, which would have been	8 But in any event, they either would
9 Friday.	9 have been sent with her that night or sent the
10 Q And is there -- when on Friday would she have	10 next day.
11 had them?	11 Q Okay. Turn to page 30 of your report, please.
12 A I have no idea.	12 Q Are you with me there?
13 Q Okay. What time did she check into the jail on	13 A I am.
14 Thursday?	14 Q All right. You are at that point commenting on
15 A 7:41 p.m.	15 Dr. Greist's opinions, correct?
16 Q Okay. And so how would the medications have	16 A In the top of this page, yes. In the bottom
17 gotten from the jail to the work release center	17 it's Nurse Ward.
18 between 7:41 p.m. and the next morning?	18 Q Right. D. We're at page 30, subsection D, as
19 A So I'm -- number one, I don't have any specific	19 in David.
20 information. I can tell you the usual and	20 A Yes. I'm going to verify that it is
21 customary practice at a jail like the Brown	21 Dr. Greist. I believe it is. Yes, that is
22 County Jail would be that her medications were	22 correct.
23 reviewed and approved or disapproved that night	23 Q Okay. And one of the things that you're
24 and sent with her. She took her -- all her	24 commenting on is the list of symptoms that
25 possessions with her. She was transported by	25 Dr. Greist attributes to discontinuation of
Page 180	Page 181
1 clonazepam, correct?	1 Dr. Thomas Fowlkes.
2 A Correct.	2 BY MR. GAHNZ:
3 Q And you're critical of that list in that	3 Q Are you ready?
4 they're mostly nonspecific and can be found in	4 A I am.
5 a number of other conditions including anxiety?	5 Q All right. This morning we were talking about
6 A I don't know if I would characterize it as	6 cases where you've testified, and one of the
7 critical of that list. I make the comment that	7 questions that I asked you was whether you had
8 it's not specific, and I disagree that those	8 testified about anything related to
9 are -- to the extent that Dr. Greist opined	9 benzodiazepine withdrawal. And I believe your
10 that those symptoms were specific to	10 statement was no, that you had not.
11 benzodiazepine withdrawal, I disagree. They	11 Do you remember that testimony?
12 are not.	12 A Or at least that it wasn't a central issue.
13 And by the way, I would like a	13 Q Wasn't a central issue. Okay.
14 restroom break at some point.	14 A That I -- and I probably -- I think -- I should
15 MR. GAHNZ: All right. Why don't we	15 have, if I didn't, qualified to say to the best
16 take that now.	16 my recollection.
17 THE WITNESS: Okay.	17 Q Okay. Fair enough.
18 THE VIDEOGRAPHER: We are off the	18 Do you remember that you were named
19 record at 2:08 p.m. This is the end of disc	19 as an expert witness on behalf of the Estate of
20 number three in the deposition of Dr. Thomas	20 Cynthia Mixon? That's one of the -- that's one
21 Fowlkes.	21 of the cases that's listed on your --
22 (Recess taken, 2:08 p.m. to 2:18 p.m.)	22 A Yes, I do recall that.
23 THE VIDEOGRAPHER: We are back on	23 Q Okay. And do you recall that you provided a
24 the record at 2:18 p.m. This is the beginning	24 report in that case?
25 of disc number four in the deposition of	25 A I do.

		Page 182	Page 183
1	Q	You provided a deposition in that case?	1 withdrawal, correct?
2	A	<b>I did.</b>	2 <b>A</b> <b>That's correct.</b>
3	Q	And you also provided an affidavit in support of the -- or you provided an affidavit in that case, right?	3 Q And those are hallucinations, delirium, 4 seizures, and autonomic hyperactivity, correct?
4			5 <b>A</b> <b>Correct.</b>
5			6 Q What is autonomic hyperactivity?
6	A	<b>I can't -- I can't agree or disagree to that.</b>	7 <b>A</b> <b>In simple terms or to explain it as succinctly</b>
7		<b>I -- I mean, if you say I did, you probably</b>	<b>as I can, that would be a catecholamine-like</b>
8		<b>have it and I probably did, but I don't recall</b>	<b>reaction, fight or flight reaction. You may</b>
9		<b>that at this moment.</b>	<b>have heard of that. So increased blood</b>
10	Q	You have been down this road before. All right. So let's turn --	<b>pressure, increased heart rate, sweating,</b>
11			<b>potentially increased temperature. So, in</b>
12	A	<b>I --</b>	<b>other words, over- -- overreaction of</b>
13	Q	I'm sorry.	<b>catecholamines.</b>
14	A	<b>I should say and it was my recollection that</b>	15 (Exhibit No. 209 was marked.)
15		<b>Ms. Mixon -- I was retained on behalf of the</b>	16 BY MR. GAHNZ:
16		<b>plaintiff in that case. Ms. Mixon died of</b>	17 Q All right. Doctor, I'm showing you what we've
17		<b>withdrawal in the jail, and it was my</b>	18 marked as Exhibit 209. And this is an
18		<b>recollection that the primary drug was</b>	19 affidavit of Dr. Thomas Fowlkes, correct?
19		<b>heroin -- or, I'm sorry, opiates of some kind.</b>	20 <b>A</b> <b>It appears to be so.</b>
20		<b>That is my recollection of that case.</b>	21 Q And if you turn to page 9 of that affidavit,
21	Q	Okay. At page 20 -- page 30. Maria is going to kill me if I go back ten pages.	22 you swore under oath on January 24, 2019,
22			23 correct?
23		On page 30 of your report,	24 <b>A</b> <b>I'm looking for a date. January. Yes, that is</b>
24		subsection D, you talk about the clinically	<b>correct.</b>
25		significant symptoms of benzodiazepine	
		Page 184	Page 185
1	Q	All right. And this was something that you presented to the Court in support of your opinions in Ms. Mixon's case, correct?	1 previously and it remains my testimony
2			2 previously that I didn't think that that was a
3			3 central issue. Many of my cases involve
4	A	<b>Generally, that is correct. I don't recall</b>	4 withdrawal from substances. Most of them are
5		<b>what the specific purpose of this affidavit is.</b>	5 opiate withdrawal. And it was my recollection
6		<b>I mean, in other words, that's not my -- I</b>	6 that this -- this was primarily related to
7		<b>didn't -- I don't know what it was in support</b>	7 opiate withdrawal.
8		<b>of specifically. In support of something, a</b>	8 As your -- as my memory is now being
9		<b>motion or something.</b>	9 refreshed, she had a seizure, and seizures are
10	Q	Fair enough.	10 not usually caused by opiate withdrawal. So my
11		But in any event, this is sworn	11 opinion was that because her death was due to a
12		testimony that you gave in Ms. Mixon's case?	12 seizure, it was more likely related to the
13	A	<b>That is correct.</b>	13 benzo withdrawal than opiate withdrawal.
14	Q	All right. And your testimony was that Ms. Mixon died of withdrawal, specifically benzodiazepine and/or opiate withdrawal in paragraph 3, correct?	14 Q And that was a central issue in the case was
15			15 how did she die, right?
16			16 MS. SCHNEIDER: Object to the form.
17			17 THE WITNESS: Yes, how -- the cause
18	A	<b>That is the case.</b>	18 of her death was a central issue in this case.
19	Q	Okay. So when you said that you hadn't testified with respect to the effects of benzodiazepine withdrawal, that was inaccurate?	19 MS. SCHNEIDER: What exhibit number
20			20 was that again? 209.
21			21 BY MR. GAHNZ:
22		MS. SCHNEIDER: Object to the form.	22 Q At page 4 under C you wrote, "I developed the
23		I think that misstates his testimony. But go ahead.	23 opinion that Ms. Mixon was suffering from
24			24 benzodiazepine and opiate withdrawal because
25		<b>THE WITNESS: So it was my testimony</b>	25 those disorders follow a predictable course."

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1    Correct?	1 <b>A   So those are two different statements though.</b>	Page 187
2 <b>A   Correct.</b>	2    This says the most prominent, and this	
3    Q   And since we're only dealing with	3    statement on page 30 says the clinically	
4    benzodiazepines, we won't talk about opiates.	4    significant.	
5    But if you go to page 5 --	5    So rebound anxiety is not usually	
6 <b>A   Okay.</b>	6    clinically significant. The clinically	
7    Q   -- under No. 2 it provides "Benzodiazepine	7    significant ones are when one has	
8    withdrawal develops within a few days of	8    hallucinations, delirium, seizures, and	
9    stopping benzodiazepines. The most prominent	9    autonomic hyperactivity.	
10   symptom of benzodiazepine withdrawal is rebound	10   Those statements are not	
11   anxiety." Correct? You wrote that?	11   inconsistent at all.	
12 <b>A   You've read it correctly so far.</b>	12   Q   So when you're testifying for the plaintiff,	
13   Q   On page 30 of your report -- have you got that	13   you listed rebound anxiety as a symptom of	
14   handy?	14   rebound anxiety -- or of benzodiazepine	
15 <b>A   I do.</b>	15   withdrawal, correct?	
16   Q   -- do you list rebound anxiety as one of the	16 <b>A   Well, you didn't read the whole paragraph. You</b>	
17   clinically significant symptoms of	17   didn't read the last sentence of that	
18   benzodiazepine withdrawal?	18   paragraph.	
19 <b>A   On page -- on page 30 you said? I was</b>	19   Q   "When death occurs in the setting of	
20 <b>commenting on Dr. Greist's list of symptoms. I</b>	20   benzodiazepine withdrawal, it is most often	
21 <b>wasn't creating a list of symptoms.</b>	21   secondary to seizures."	
22   Q   Did you write "The clinically significant	22 <b>A   Yes.</b>	
23   symptoms of benzodiazepine withdrawal are	23   Q   Okay. So my question is, when you were	
24   hallucinations, delirium, seizures, and	24   testifying on behalf of the plaintiff, you	
25   autonomic hyperactivity"?	25   listed rebound anxiety as a symptom of	
Page 188		Page 189
1    benzodiazepine withdrawal, correct?	1    same page --	
2 <b>A   I listed it as a most prominent symptom, not a</b>	2 <b>A   Now we're on Exhibit 209 or my report?</b>	
3 <b>clinically significant symptom. This other</b>	3    Q   We're back on your affidavit.	
4 <b>sentence has clinically significant symptoms.</b>	4 <b>A   Oh, my affidavit. Okay. Which number or which</b>	
5    Q   Did you list rebound anxiety as a symptom of	5    page?	
6    benzodiazepine withdrawal anywhere in your	6    Q   Page 5, Roman numeral III or I-I-I.	
7    50-odd pages of report for the defendants in	7 <b>A   Okay.</b>	
8    this case?	8    Q   You indicate that "the symptoms of	
9 <b>A   Well, in the -- in the sentence just before</b>	9    benzodiazepine withdrawal are summarized in the	
10 <b>that I said, "The symptoms are mostly</b>	10   Clinical Institute Withdrawal Assessment -	
11 <b>nonspecific and can be found in a number of</b>	11   Benzodiazepine CIWA-B." Correct?	
12 <b>conditions including anxiety."</b>	12 <b>A   Correct.</b>	
13 <b>And I believe if I turn to Dr.-- let</b>	13   Q   And that is a document that we showed you as	
14 <b>me turn to Dr. Greist's report and see</b>	14   Exhibit 206 in your exhibit earlier, correct?	
15 <b>whether -- I was commenting on his description</b>	15 <b>A   Correct.</b>	
16 <b>of symptoms. Let me see where it's listed.</b>	16   Q   All right. And your testimony I believe was	
17 <b>Page 20 of his report. Yes, he lists anxiety.</b>	17   that you don't rely on the CIWA scale in your	
18 <b>It doesn't use the specific word "rebound" in</b>	18   practice.	
19 <b>there. I believe the word -- the word</b>	19 <b>A   That was not my testimony. My testimony was</b>	
20 <b>"rebound" I don't believe is in that paragraph.</b>	20   that I do not use the CIWA-B assessment scale.	
21 <b>I don't know whether it's anywhere within my</b>	21   So I use the CIWA scale regularly. I don't use	
22 <b>report; you would have to do a word search to</b>	22   the CIWA-B, because it has mostly nonspecific	
23 <b>see that. It is in the presentation that you</b>	23   symptoms and it doesn't predict clinical	
24 <b>provided.</b>	24   severity.	
25   Q   All right. And under Roman numeral III on that	25   Q   But you asked the Court to rely on the CIWA-B	

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1 scale as stating the signs and symptoms of 2 benzodiazepine withdrawal in your sworn 3 testimony when you were testifying on behalf of 4 the plaintiff.	1 not part of her -- she was -- my recollection 2 of Ms. Mixon's case is that she was suffering 3 from opiate withdrawal, so that was what her 4 symptoms were, and that she suddenly died of a 5 seizure. And because it was a seizure, it was 6 not likely related to the opiate withdrawal, 7 but may well have been related to 8 benzodiazepine withdrawal which she had also 9 been taking prior to coming to jail.
5 MS. SCHNEIDER: Object to the form. 6 THE WITNESS: The sentence speaks 7 for itself. I said the symptoms are summarized 8 in that -- in that document, yes.	10 Q Do you tell the Court in Exhibit 209 that a 11 clinically significant symptom of 12 benzodiazepine withdrawal is hallucination?
9 BY MR. GAHNZ: 10 Q Okay.	13 MS. SCHNEIDER: Asked and answered. 14 THE WITNESS: Do I tell -- so number 15 one, I would have to read this document to see 16 exactly what I told the Court in this case.
11 A And went on to say I was familiar with them 12 and... 13 Q Now, going back to your report at page 30 you 14 indicate that the -- again, "The clinically 15 significant symptoms of benzodiazepine 16 withdrawal are hallucinations."	17 BY MR. GAHNZ: 18 Q Go ahead.
19 Is that contained anywhere in the 20 sworn testimony that you gave on behalf of the 21 plaintiff? 22 A You mean in the Mixon case? 23 Q Yes. 24 A Well, that wasn't -- that wasn't an issue in 25 that case. As I recall, Ms. Mixon died suddenly due to a seizure. And she was not having hallucinations or delirium. That was	20 Q Why don't we go off the record. 21 THE VIDEOGRAPHER: We are off the 22 record at 2:31 p.m. 23 (Pause in proceedings.) 24 THE VIDEOGRAPHER: We are back on 25 the record at 2:33 p.m.
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1 BY MR. GAHNZ: 2 Q Do you have the question in mind, Doctor? 3 A I do. 4 So after refreshing my memory of 5 this affidavit, Ms. Mixon was not suffering 6 from hallucinations, and it was not something 7 that was included in my affidavit.	1 face, hands, or feet; and anxiety (such as a 2 description that one's heart was about to 3 bust), these are well known withdrawal 4 symptoms." 5 Did I read that correctly, first of 6 all?
7 A You did. 8 Q Okay. Do you list delirium as a significant symptom 9 of benzodiazepine withdrawal in your affidavit 10 to the Court? 11 A Ms. Mixon was not suffering from delirium, and 12 it was not something that was included in my 13 report.	8 Q Okay. Do any of those classic signs of 9 benzodiazepine withdrawal appear in your report 10 for the defendants in this case as part of 11 your -- not somebody else saying it, but did 12 you list those as classic signs of 13 benzodiazepine withdrawal?
14 Q Do you list autonomic hyperactivity in your 15 affidavit to the Court? 16 A I believe I did discuss that. I don't know if 17 that exact terminology or some other synonym 18 was described, but yes.	14 A As classic signs or just -- 15 Q Or at all. 16 A Just a minute. 17 So what I say in my report --
19 Q Okay. At page 7 of your affidavit. Are you 20 there? 21 A I am. 22 Q About midway through paragraph 6 you write, "In 23 addition to classic signs of benzodiazepine 24 withdrawal including headache; fatigue; loss of 25 appetite; flushing or feeling of burning in the	18 Q Which page and paragraph are you referring to, 19 sir? 20 A I'm on No. 20, opinions 11 and 12. And then on 21 23, No. 17. On page 23, No. 17, "It's my 22 opinion that Ms. Freiwald was not suffering 23 from clinically significant withdrawal 24 symptoms." 25 Q Okay. Do you -- other than at page 30, do you

	Page 194	Page 195
1	list what you think the clinically significant	<b>1 A Okay.</b>
2	signs of benzodiazepine withdrawal are?	2 Q -- do you inform the reader that a classic sign
3	<b>A Well, I try not to be redundant. I mean, I</b>	3 of benzodiazepine withdrawal is headache?
4	<b>listed them at page 30. The clinically</b>	<b>4 A I don't believe it's in my report.</b>
5	<b>significant signs of benzodiazepine withdrawal</b>	5 Q All right. Do you inform the reader that a
6	<b>are delirium and seizures.</b>	6 classic sign of benzodiazepine withdrawal is
7	Q Do you list -- do you inform us as the	7 fatigue?
8	plaintiffs' counsel that you believe that the	<b>8 A I don't believe it's -- I -- so that is amongst</b>
9	classic signs of benzodiazepine withdrawal	<b>9 the symptoms. That is a very nonspecific</b>
10	include headache? Did you tell the plaintiffs	<b>10 symptom, and I believe it is misleading to say</b>
11	that in your report on behalf of the defendants	<b>11 that it is amongst the classic signs.</b>
12	in this case?	12 Q So when you did the affidavit for the Court,
13	<b>A Not --</b>	13 were you misleading the Court?
14	MS. SCHNEIDER: Well, I'm just going	14 MS. SCHNEIDER: Object to the form.
15	to object. I think there's two questions out	<b>15 THE WITNESS: These are two</b>
16	there. But do you understand what he's asking?	<b>16 different patients with two different sets of</b>
17	<b>THE WITNESS: Yes.</b>	<b>17 symptoms. And Ms. Mixon was suffering from</b>
18	BY MR. GAHNZ:	<b>18 significant opiate withdrawal and then suddenly</b>
19	Q I'll start over.	<b>19 died of a seizure.</b>
20	Anywhere in your report that you did	20 BY MR. GAHNZ:
21	on behalf of the defendants in Ms. Freiwald's	21 Q Okay.
22	case --	<b>22 A Which is different than Ms. Freiwald who never</b>
23	<b>A So we're talking about this present case, not</b>	<b>23 had any specific signs or symptoms of</b>
24	<b>this affidavit anymore? In this present case?</b>	<b>24 benzodiazepine withdrawal. She had nonspecific</b>
25	Q Yeah.	<b>25 signs and symptoms which were consistent with a</b>
	Page 196	Page 197
1	<b>number of things. They are consistent with</b>	1 Q Did you tell the reader of your report in this
2	<b>benzodiazepine withdrawal; they're also</b>	2 case that flushing or feeling of burning in the
3	<b>consistent with anxiety, emotional</b>	3 face, hands, or feet was a classic sign of
4	<b>disregulation, and a number of other things.</b>	4 benzodiazepine withdrawal?
5	<b>So she did not have classic</b>	<b>5 A I don't recall that being a feature of this</b>
6	<b>benzodiazepine withdrawal symptoms.</b>	<b>6 case or clinically significant in this case and</b>
7	Q And I'll move to strike as nonresponsive.	<b>7 not an important portion.</b>
8	Did you inform the reader of your	8 Q Regardless of whether it was relevant, did you
9	report in the Freiwald case that a classic sign	9 include it in your report as a classic sign of
10	of benzodiazepine withdrawal is fatigue?	10 benzodiazepine withdrawal?
11	MS. SCHNEIDER: Asked and answered.	11 MS. SCHNEIDER: Asked and answered.
12	<b>THE WITNESS: I've already provided</b>	<b>12 THE WITNESS: No. I try to -- I try</b>
13	<b>you my answer to that. Would you like me to</b>	<b>13 to include only relevant symptoms.</b>
14	<b>say it again?</b>	14 BY MR. GAHNZ:
15	BY MR. GAHNZ:	15 Q Okay. So let's examine that for just a minute.
16	Q Yes, please.	16 At page 30 --
17	<b>A I don't believe it's in my report.</b>	<b>17 A Of my report?</b>
18	Q Okay. Thank you.	18 Q Yep. -- you tell the reader that the
19	Did you tell the reader of your	19 clinically significant symptoms of
20	report in the Freiwald case that loss of	20 benzodiazepine withdrawal are hallucinations.
21	appetite was a classic sign of benzodiazepine	21 That's one of the things that you
22	withdrawal?	22 tell the reader?
23	<b>A I don't believe it -- I don't believe I did,</b>	<b>23 A That is correct.</b>
24	<b>and I don't believe it's clinically relevant in</b>	24 Q There was no hallucinations in this case,
25	<b>this case.</b>	25 right?

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1 A <b>That is correct.</b>		1 <b>I don't know how to go about telling you any more clearly.</b>
2 Q Okay. But you included hallucinations when you were an expert for the defendant but not when you were an expert for the plaintiff, true?		2 BY MR. GAHNZ:
3		3 Q All right. So the last one here is, did you
4		5 inform the reader in the Freiwald matter or
5 A <b>No, not true.</b>		6 anybody reading your report that a classic sign
6 Q We've already discussed whether or not		7 of benzodiazepine withdrawal is anxiety such as
7 hallucinations was contained in your affidavit		8 a description that one's heart was about to
8 to the Court, and you said it was not, correct?		9 bust?
9 A <b>I don't believe that either Ms. Mixon or</b>		10 A <b>Well, we talked about Ms. Freiwald having</b>
10 <b>Ms. Freiwald were suffering from</b>		11 <b>anxiety. I mean, we -- that's discussed in</b>
11 <b>hallucinations. I don't believe that's</b>		12 <b>here and that it's a nonspecific symptom of</b>
12 <b>relevant to the -- what I -- what I am saying</b>		13 <b>benzodiazepine withdrawal or other. It's not</b>
13 <b>in this sentence is I am telling you what are</b>		14 <b>specific to that though.</b>
14 <b>the dangerous symptoms -- or the specific</b>		15 Q Okay. Continuing on on page 8 of your
15 <b>symptoms of benzodiazepine withdrawal:</b>		16 affidavit. You write "A reasonable provider
16 <b>Hallucinations, which can be part of delirium;</b>		17 would then inquire about Ms. Mixon's prior
17 <b>seizures; and autonomic hyperactivity. We</b>		18 prescriptions and drug usage. A reasonable
18 <b>don't have any evidence in this case that</b>		19 provider would have determined that she was on
19 <b>Ms. Freiwald had any of those conditions.</b>		20 multiple drugs which cause multiple" -- "which
20 Q But you didn't tell us about all the classic		21 cause physical dependence and which are
21 signs that we've just gone through in		22 dangerous if stopped abruptly."
22 paragraph 6 of your affidavit?		23 Which drugs are you referring to as
23 MS. SCHNEIDER: Asked and answered.		24 being dangerous if stopped abruptly?
24 MR. SALEM: Object to the form.		25 A <b>Well, specifically in her case, high doses</b>
25 <b>THE WITNESS: I don't know how to --</b>		
Page 200		Page 201
1 <b>of -- I believe it was multiple different</b>		1 benzodiazepine taper." Is that correct?
2 <b>categories of drugs, but specifically I know</b>		2 A <b>That is correct.</b>
3 <b>she was on high doses of opiates, and she was</b>		3 Q And that was required in that case?
4 <b>on high doses of benzodiazepines. And both of</b>		4 A <b>That is correct.</b>
5 <b>them are dangerous if stopped abruptly. And,</b>		5 Q And not required in this case?
6 <b>in fact, it killed her in this case.</b>		6 A <b>That is correct.</b>
7 Q The abrupt cessation of benzodiazepines killed		7 Q Okay.
8 her?		8 A <b>Because of the difference in the -- the dosing</b>
9 A <b>The abrupt cessation of opiates caused her to</b>		9 <b>and the length of time they had been on it. If</b>
10 <b>be very sick with opiate withdrawal, and then</b>		10 <b>I remember correctly, Mrs. Mixon was obtaining</b>
11 <b>she suddenly died of a seizure which was likely</b>		11 <b>large quantities of illicit substances.</b>
12 <b>related to benzodiazepine withdrawal. And she</b>		12 Q Turn to page 32. Are you there?
13 <b>had no medical treatment and died of a seizure.</b>		13 A <b>I am.</b>
14 <b>I'm sorry, I should -- let me stop my answer.</b>		14 Q Under paragraph A you write, "It is my opinion
15 Q Paragraph 7 of your affidavit that you provided		15 that each of the CCS nursing staff acted within
16 when you were hired as a plaintiff's expert		16 with the appropriate scope of practice and
17 provides, "A reasonable medical professional		17 exercised appropriate professional nursing
18 who encountered Ms. Mixon at any point after		18 judgment."
19 she began to exhibit symptoms on Wednesday		19 What is the -- tell me what nursing
20 evening would have at a minimum treated the		20 judgment was exercised by Jessica Jones with
21 withdrawal" -- "Ms. Mixon's withdrawal		21 respect to Ruth Freiwald.
22 symptoms. He/she would have given symptomatic		22 A <b>So what I said -- what you didn't read was</b>
23 treatment for Ms. Mixon's vomiting and diarrhea		23 <b>31 -- at the bottom of page 31, No. 5. She had</b>
24 and would have ensured she was taking in		24 <b>a very -- Nurse Ward in her initial report had</b>
25 adequate fluids and would have begun a		25 <b>a very long, multiple pages, maybe more than a</b>

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<p>1 dozen pages of the reason that the nurses did  2 all three of those things, act outside their  3 scope of practice, did not exercise appropriate  4 nursing judgment, and did not act within the  5 standard of care. So there were multiple  6 pages.</p> <p>7 And rather -- because I was not  8 retained for the purposes of opining on each  9 one of those actions, I just generally said  10 that having read those things I disagreed that  11 the nurses did any of those three things, acted  12 outside their scope of practice, did not use  13 appropriate professional nursing judgment, and  14 acted within the standard of care.</p> <p>15 Q Okay.</p> <p>16 A Now, to your question specifically about Nurse  17 Jones, your question was what did she do to --</p> <p>18 Q Exercise appropriate professional nursing  19 judgment.</p> <p>20 A She reviewed the medications which had been  21 provided by Ms. Freiwald's son and the  22 verifications that had been performed at the  23 pharmacy. She took that information, she spoke  24 with Dr. Fatoki on the phone, relayed  25 information to him, received instructions from</p>	<p>1 him, and carried out those instructions.  2 That's all professional nursing judgment.  3 Q Anything else?  4 A Not that I can think of at this moment.  5 Q Okay. You indicate at page 32 under E that  6 "Ms. Freiwald failed to bring her medications  7 when she self surrendered as instructed in the  8 preregistration information."  9 As I read your report -- I'm not  10 sure exactly where it is -- I thought I saw  11 somewhere that it was your understanding that  12 Ms. Freiwald didn't have to go to jail on the  13 27th. Is that -- am I stating that correctly,  14 or am I misreading that?  15 A You're misreading that.  16 Q Okay. So she did have to report to jail on the  17 27th?  18 A Well, it was my understanding of reading the  19 transcript of the sentencing hearing that --  20 that actually it was her attorney that had  21 suggested that she self report that evening.  22 So it was -- I mean Ms. Freiwald's attorney.  23 She might not have wanted to go to jail that  24 night, but it was her own attorney that  25 suggested that she self surrender that night.</p>
<p>1 Q And the Court, in fact, ordered her to jail on  2 October 27th?</p> <p>3 A Yes, that is my understanding.</p> <p>4 Q All right. So she didn't have a choice as to  5 whether to go to jail?</p> <p>6 A No, that was -- that's correct.</p> <p>7 Q All right. I just wanted to make sure we were  8 clear on that.</p> <p>9 In your opinion are the nurses in  10 this case bound by the NCCHC policies that were  11 in effect in 2016?</p> <p>12 MR. SALEMI: Object to form.</p> <p>13 THE WITNESS: The answer to your  14 question cannot be answered with a simple yes  15 or no, but the answer is no. You just said  16 bound. So NCCHC is a nonprofit accreditation  17 agency that sets out standards for health  18 services in jails that represent best practices  19 in jails. So they don't set standards of care,  20 so nurses cannot be bound by them to set a  21 standard of care.</p> <p>22 BY MR. GAHNZ:</p> <p>23 Q Can they --</p> <p>24 A Nurses or doctors or anyone else.</p> <p>25 Q I'm sorry. I didn't mean to step on your</p>	<p>1 answer.</p> <p>2 A That's okay. I was just saying those standards  3 don't establish a standard of care.</p> <p>4 Q Okay. What if the CCS through contract agrees  5 to be bound by those standards? Would that  6 change your answer?</p> <p>7 A No. Or likewise, they may have policies, and  8 they I think do have policies that are  9 consistent with those standards. So -- but  10 then your question may be -- your next question  11 might be are they bound to follow every policy.  12 And so a policy violation or not following  13 every policy does not indicate a breach of the  14 standard of care. Those are two different  15 things.</p> <p>16 Q So the fact that there's a -- well, have you  17 seen the contract?</p> <p>18 A I that it was provided as part of discovery,  19 yes.</p> <p>20 Q All right. And would you agree with me that in  21 the scope of services that CCS agreed to  22 provide to Brown County, they agreed that they  23 would -- well --</p> <p>24 A I'll accept your characterization.</p> <p>25 Q Well, I don't want to give a characterization</p>

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1	because I'll get an objection. I'll give you a	1 Q And what about Dr. Fatoki?
2	reading.	2 A <b>Same answer.</b>
3	All right. Showing you what had	3 Q What about CCS?
4	previously been marked as Exhibit 61. Okay.	4 A <b>Well, they have agreed to endeavor to provide</b>
5	I've highlighted the conditions of performance	5 <b>care that is consistent with those policies,</b>
6	and compensation. And just take a look at	6 <b>so -- but evidence in one case that their</b>
7	that.	7 <b>practices or policies weren't consistent with</b>
8 A	<b>Okay.</b>	8 <b>every single one of those sentences in that</b>
9 Q	Okay. So based on -- based on the contract	9 <b>book would not indicate a breach of the</b>
10	language entered into between CCS and Brown	10 <b>standard of care.</b>
11	County, does that change your opinion as to	11 <b>And more specifically, as it relates</b>
12	whether or not CCS was required to follow the	12 <b>to the Huber center, not even all of the</b>
13	standards set forth in the NCCHC?	13 <b>policies could apply, because it was a</b>
14 A	<b>I thought your -- you just said CCS. And I</b>	14 <b>different environment; the inmates were free to</b>
15	<b>thought before you said the nurses were they</b>	15 <b>come and go during the daytime, et cetera.</b>
16	<b>bound to follow the policies. I mean, those</b>	16 Q Was Ms. Freiwalde ever told that she needed to
17	<b>are two different questions I guess.</b>	17 go to her own doctor for a blood pressure
18 Q	Fair enough.	18 check?
19 A	<b>Which is your -- which is your --</b>	19 A <b>That information was contained in the Huber</b>
20 Q	Let's start with the nurses.	20 <b>preregistration instructions. So I can't say</b>
21 A	<b>Okay. So because NCCHC policies -- I'm sorry,</b>	21 <b>for certain that she or her attorney were</b>
22	<b>because NCCHC standards don't set a standard of</b>	22 <b>provided with those. There is about five pages</b>
23	<b>care, then the nurses are not bound -- that</b>	23 <b>worth of instructions. And she reported at the</b>
24	<b>does not determine their compliance with the</b>	24 <b>right time and to the right place, so I believe</b>
25	<b>standard of care.</b>	25 <b>more likely than not she did receive those</b>
Page 208		Page 209
1	<b>instructions, and yes, she was told she would</b>	1 THE WITNESS: Well, I was going --
2	<b>receive care from her primary providers.</b>	2 MS. DOYLE: I'll join.
3 Q	Did Ms. Freiwalde have a known serious medical	3 THE WITNESS: Well, I was going to
4	condition when she entered Brown County Jail?	4 say -- I was going to -- I'm not about to be
5	MS. SCHNEIDER: Object to the form.	5 smart-alecky.
6	MS. DOYLE: I'll join.	6 That sounds like a legal conclusion
7	<b>THE WITNESS: I do not believe she</b>	7 whether -- I do not consider her conditions or
8	<b>did.</b>	8 her suicide six months before to be an active
9 BY MR. GAHNZ:		9 medical condition which required urgent action.
10 Q	Why is that?	10 So, in other words, she did not need to be on
11 A	<b>Well, I don't believe that she had a medical</b>	11 suicide watch. But whether the Court
12	<b>condition which qualified as a serious medical</b>	12 determines that to be a serious medical
13	<b>condition, number one.</b>	13 condition or not is something for the Court to
14 Q	Okay.	14 decide, not for me.
15 A	<b>So she was not suicidal. She had chronic</b>	15 BY MR. GAHNZ:
16	<b>hypertension. She had no other urgent medical</b>	16 Q So that's outside your area of expertise?
17	<b>conditions. So she didn't have them. And to</b>	17 A <b>No, I didn't say that. I believe that's more a</b>
18	<b>the extent that she -- to the extent that she</b>	18 <b>legal term of art than a medical term.</b>
19	<b>did have any unknown ones, they were not known</b>	19 Q All right. At page 35 of your report under the
20	<b>to the providers.</b>	20 first paragraph with the three dots you
21 Q	The fact that she had attempted suicide in	21 indicate that she took a near-fatal dose of
22	February in your opinion is not a serious	22 clonazepam. What's your basis for that?
23	medical condition?	23 A <b>That she went unconscious and woke up and</b>
24	MS. SCHNEIDER: Object to the form	24 <b>hadn't died. I mean -- I mean, she took -- she</b>
25	and foundation.	25 <b>took enough. She took nine. On the face of it</b>

	Page 210	Page 211
1	that's a near fatal amount. Number two, she	1 BY MR. GAHNZ:
2	passed out or went to sleep, and when she	2 Q So leaving aside your -- well, leaving aside
3	awoke, she had not died. So I know that she	3 the supplemental report for the time being, are
4	didn't die from it, but it was an amount that	4 there facts or data that you considered by this
5	could have killed her.	5 witness that are not included within your -- in
6 Q	Okay. At pages 37, 38, 39 of your report, are	6 drafting your initial report which are not
7	these all of the data and facts that you	7 included in this report?
8	considered in forming your opinions?	
9 A	<b>For my -- for my original --</b>	8 A <b>You said something about a witness. I'm sorry,</b>
10	MS. SCHNEIDER: I'm just going to	9 <b>I just missed. Can you restate the question?</b>
11	object as to the word "facts," because I think	10 <b>Maybe I misunderstood.</b>
12	the rest of the -- there's facts in the rest of	11 Q That's okay.
13	the report. But to the extent it's the	12 Is there anything that you
14	documents, you can go ahead and answer.	13 considered in coming to the conclusions that
15	<b>THE WITNESS: Would you mind reading</b>	14 you came to in your initial report that is not
16	<b>the question again, please, ma'am?</b>	15 listed on the pages 37, 38, and 39 of that
17	(Last question read.)	16 report?
18	<b>THE WITNESS: Well, I believe these</b>	17 A <b>Not that I'm aware of at this moment. As I</b>
19	<b>were the documents that I was provided at the</b>	18 <b>just told you, I also drew upon my training,</b>
20	<b>time of my original Rule 26 report. Of course,</b>	19 <b>experience, and expertise, but I'm not aware of</b>
21	<b>I also relied upon my experience, training, my</b>	20 <b>any other data I was provided or any other</b>
22	<b>20 years of practice of correctional medicine</b>	21 <b>facts which I considered. I am not aware of</b>
23	<b>in forming my opinions, and I was provided</b>	22 <b>any other data or facts --</b>
24	<b>additional materials for my supplemental report</b>	23 Q Okay.
25	<b>which are listed on that report.</b>	24 A <b>-- or documents.</b>
		25 Q All right. Why don't you pull up Exhibit 205.
	Page 212	Page 213
1	That is your supplemental report, correct?	1 you with me?
2 A	<b>That is correct.</b>	2 A <b>I am.</b>
3 Q	All right. And at pages 1 and 2 this lists the	3 Q Item No. 6.
4	items that you reviewed in addition to those	4 Did you do any independent
5	that are shown at the end of your initial	5 investigation before you came to the conclusion
6	report, correct?	6 that you agreed with Dr. Daniel that
7 A	<b>That is correct.</b>	7 clonazepam, which was prescribed at a higher
8 Q	Is there anything else that's not included on	8 dose than she was prescribed in October of
9	either pages 37, 38, 39 of your initial report	9 2016, was stopped abruptly and not tapered
10	and/or pages 1 and 2 of your supplemental	10 after her February 2016 suicide attempt without
11	report that you reviewed in connection with	11 significant withdrawal symptoms?
12	your testimony?	
13 A	<b>Yes.</b>	12 A <b>I don't know what your definition of</b>
14 Q	What?	13 <b>"independent research or something like that"</b>
15 A	<b>Since my supplemental report, I have also been</b>	14 <b>is. However, I will tell you what I did, which</b>
16	<b>prescribed -- provided with the County</b>	15 <b>was read his opinion, went back and rereviewed</b>
17	<b>defendant expert reports which were not</b>	16 <b>the records that I had and confirmed that that</b>
18	<b>previously provided to me.</b>	17 <b>was, in fact, the case. So I guess that's</b>
19 Q	Okay.	18 <b>independent research.</b>
20 A	<b>And those are three in number. I can tell</b>	19 Q Did you review Dr. Greist's testimony?
21	<b>you -- do you want me to tell you who they are?</b>	20 A <b>I did review Dr. Greist's testimony.</b>
22 Q	Yes, please.	21 Q With respect to your conclusion -- or your
23 A	<b>Mr. Hayes; Mr. Carter, I believe; and</b>	22 agreement with Dr. Daniel?
24	<b>Dr. Robbins.</b>	23 A <b>If -- I probably did, but I don't recall -- I</b>
25 Q	So at page 5 of your supplemental report -- are	24 <b>don't recall what you're referring to at this</b>
		25 <b>moment if you --</b>

	Page 214		Page 215
1 Q	Do you recall Dr. Greist's testimony with 2 respect to the February cessation of 3 benzodiazepine?	1 <b>Dr. Sheets at Prevea in March, and he stopped</b> 2 <b>that other benzodiazepine, Ativan, and</b> 3 <b>restarted her clonazepam.</b>	
4 A	<b>Well, there are a number of experts, and so I</b> 5 <b>don't know that I recall Dr. Greist's separate</b> 6 <b>from the others. So if you want to point me to</b> 7 <b>it, I'll be glad to look at it, but no, I don't</b> 8 <b>recall exactly what his opinion was.</b>	4 Q Doctor, I want you to assume for me that 5 Ms. Freiwald was continued on the clonazepam 6 and gabapentin from October 28th when the meds 7 arrived at the jail through November 2nd. Do 8 you have an opinion as to whether she would 9 have stepped in front of the truck on 10 November 2nd had she been continued on those 11 medications?	
9 Q	Do you know what happened to Ms. Freiwald after 10 they took her off of the benzodiazepine in 11 February of 2016?	12 MS. SCHNEIDER: Just going to object 13 to the form, incomplete hypothetical, but go 14 ahead.	
12 A	Yes.	15 <b>THE WITNESS: So you are -- you're</b> 16 <b>asking me a hypothetical question. We don't</b> 17 <b>know all of the circumstances, but you're --</b> 18 <b>but based upon what you just said, I believe</b> 19 <b>that even had she been continued on those</b> 20 <b>medications, she would have done -- done the</b> 21 <b>suicidal act which she did in February -- just</b> 22 <b>like she did in February while she was on those</b> 23 <b>medications. So, yes, I do have an opinion</b> 24 <b>that she would have.</b>	
13 Q	What?	25	
14 A	<b>Well, she was discharged -- so she was kept in</b> 15 <b>the hospital for two days; she was then sent to</b> 16 <b>a psychiatric facility. When she was</b> 17 <b>transferred to the psychiatric facility, the</b> 18 <b>clonazepam was not continued. It was not</b> 19 <b>continued at the psychiatric facility either.</b> 20 <b>She was discharged from that facility.</b>		
21	<b>Approximately two weeks later she</b> 22 <b>went to the emergency department with chest</b> 23 <b>pain and anxiety, and an emergency department</b> 24 <b>physician began another benzodiazepine, Ativan,</b> 25 <b>in a small dose. And she ultimately went to</b>		
	Page 216		Page 217
1 BY MR. GAHNZ:		1 have stepped in front of the truck on 2 November 2nd? Do you have an opinion as to 3 that?	
2 Q	Assume all the other facts of the case are the 3 same, she's not continued on her clonazepam, 4 she's not continued on her gabapentin, but 5 she's taken to the main jail for benzodiazepine 6 withdrawal protocol. Would she have stepped in 7 front of the truck on November 2nd, 2016?	4 MS. SCHNEIDER: Asked and answered.	
8	MS. SCHNEIDER: Incomplete 9 hypothetical, but go ahead if you can answer.	5 <b>THE WITNESS: That is the same</b> 6 <b>question you just -- if she was at the Brown</b> 7 <b>County Jail, she wouldn't have been allowed to</b> 8 <b>have Huber privileges, and therefore she</b> 9 <b>couldn't have stepped in front of a truck.</b>	
10	<b>THE WITNESS: So that -- that almost</b> 11 <b>is an impossible question to answer.</b>	10 BY MR. GAHNZ:	
12	<b>Obviously, if she were taken to the main jail</b> 13 <b>and put on suicide watch, for instance, in a</b> 14 <b>suicide smock, she would not have been out in</b> 15 <b>order to be able to step in front of a truck,</b> 16 <b>so she couldn't have stepped in front of a</b> 17 <b>truck. I believe her condition, her mental</b> 18 <b>condition, would have been much worse, however,</b> 19 <b>if you follow -- if you follow my answer. I</b> 20 <b>mean --</b>	11 Q Okay.	
21	BY MR. GAHNZ:	12 A <b>However, the judge had ordered that. And I</b> 13 <b>believe her mental condition -- it might well</b> 14 <b>have been below the standard of care to say</b> 15 <b>that she couldn't go and do what the judge</b> 16 <b>ordered and allow her to have Huber privileges.</b>	
22 Q	I do follow your answer. But I'm asking if she 23 would have been brought back to the jail and 24 put on the benzodiazepine withdrawal protocol 25 that Brown County Jail had in place, would she	17 Q Assume for me that all other facts of the case 18 being the same but that either Nurse Jones or 19 Nurse Blozinski had responded to the medical 20 atten- -- medical slip on 10/28 by going out to 21 the Huber facility and assessing Ms. Freiwald. 22 Would they have been able to notice 23 withdrawal signs as of the 28th?	
		24 A <b>Well, one problem with your hypothetical is I</b>	

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1	<b>don't believe they received the medical request</b>	1 Nurse Jones or Nurse Blozinski gone to the work
2	<b>forms on the 28th. So that's one problem with</b>	2 release center on October 29th, would they have
3	<b>your hypothetical.</b>	3 noticed withdrawal signs of benzodiazepine in
4	Q Okay. So if they received on the 29th -- the	4 Ms. Freiwald?
5	form on the 28th, if they got it on the	5 MR. SALEMI: Show objection, form,
6	29th and had seen her that day --	6 incomplete hypothetical, assumes facts not in
7	A I'm not even sure that -- I'm not sure exactly	7 evidence.
8	whether both of them arrived on the same day.	8 MS. SCHNEIDER: Join.
9	I think they responded to -- hold on just a	9 <b>THE WITNESS: My opinion is that had</b>
10	moment.	10 <b>they -- had they seen Ms. Freiwald on that</b>
11	One is responded to on the 29th, and	11 <b>date, they would not have, because my opinion</b>
12	one of them on the 31st, which -- but it was	12 <b>is that she did not have clinically significant</b>
13	really late on Sunday night. I mean, if you	13 <b>withdrawal signs and symptoms, so they couldn't</b>
14	follow what I'm saying, not on the Monday day,	14 <b>have seen them.</b>
15	but really on the Sunday night shift.	15 BY MR. GAHNZ:
16	Q Right. And what we know that -- is that that's	16 Q Same hypothetical with respect to October 31st.
17	when the slip was returned to Ms. Freiwald,	17 Would the -- either Nurse Jones or Nurse
18	correct?	18 Blozinski have noticed withdrawal signs had
19	A That's when it was responded to by the nurses.	19 they gone out to the work release center --
20	Q All right. So we know that they had the slips	20 MR. SALEMI: Same objections.
21	in their possession on the 29th and on the	21 BY MR. GAHNZ:
22	31st, correct?	22 Q -- to see Ms. Freiwald?
23	A That's correct.	23 MR. SALEMI: Same objections.
24	Q All right. So the hypothetical, then, is	24 MS. SCHNEIDER: Join.
25	assuming all other facts are the same, had	25 <b>THE WITNESS: Same answer as before.</b>
Page 220		Page 221
1	<b>I don't believe she had clinically significant</b>	1 Q Did you review this policy, Exhibit 46, as part
2	<b>withdrawal symptoms.</b>	2 of your -- in order to form the opinions that
3	MR. GAHNZ: Why don't we take a	3 you have in this case?
4	five-minute break. I think I'm just about	4 A I did. As I sit here today, I'm not intimately
5	done. I just want to review my notes and see	5 familiar with the details of it. I reviewed it
6	if there's anything else that I want to cover.	6 a while -- a while ago, so I'm not familiar
7	THE VIDEOGRAPHER: We are off the	7 with all the details of it at this time.
8	record at 3:12 p.m.	8 Q All right. I'm going to turn back to what had
9	(Recess taken, 3:12 p.m. to 3:20 p.m.)	9 been previously marked as Exhibit 66 and show
10	THE VIDEOGRAPHER: We are back on	10 you Article 2 within the scope of services.
11	the record at 3:20 p.m.	11 Do you see where the contract
12	BY MR. GAHNZ:	12 requires CCS to provide psychiatric services?
13	Q Doctor, I'm going to show you what we've	13 A Tell me which number again. I'm not --
14	previously marked as Exhibit 46. Is this one	14 Q I'll highlight it.
15	of the policies from CCS that you reviewed in	15 A I'm --
16	coming to your conclusions in this case?	16 Q No, I'm sorry. It's ridiculously small print.
17	A It is.	17 A I wasn't trying to be difficult. I forgot -- I
18	Q All right. Was Brown County Jail a facility	18 forgot what you were --
19	where CCS provided mental health services?	19 Yes, there were -- there was
20	A I believe -- it is my understanding that the	20 separate mental health providers, but they
21	mental health professionals work for a	21 were, I guess, provided by CCS. I agree with
22	different entity, not CCS. I wasn't asked to	22 that assessment.
23	specifically review that contract, and I'm not	23 Q Okay. So now with that preliminary out of the
24	100 percent certain that I know the answer to	24 way, you would agree that the policy under
25	that.	25 Exhibit 46 applied to Brown County?

Page 222	Page 223
1 MR. SALEMI: Object to form.	1 perform Focus Screening at intake and ongoing
2 MS. SCHNEIDER: Join.	2 monitoring to identify potentially suicidal
3 MS. DOYLE: Yeah, I'll join too.	3 inmates throughout the inmate's incarceration,
4 <b>THE WITNESS: So I was not -- I did</b>	4 correct?
5 <b>review the CCS policies. Obviously, I was</b>	5 <b>A That is what that says.</b>
6 <b>mainly reviewing them as it related to</b>	6 Q And that's CCS staff?
7 <b>Dr. Fatoki, because that was on whose behalf I</b>	7 <b>A It doesn't say that.</b>
8 <b>was retained.</b>	8 Q Is there anything in the documents that you saw
9 BY MR. GAHNZ:	9 that would allow Brown County staff to take
10 Q Sure.	10 that role of doing the suicide screening?
11 A <b>It was my understanding that this policy is a</b>	11 A <b>Well, number one, it's standard procedure in</b>
12 <b>general CCS policy and/or -- and are</b>	12 <b>many jails, if not most jails, in America that</b>
13 <b>potentially made specific to each facility. I</b>	13 <b>your initial screening, including your initial</b>
14 <b>do believe -- what I can't remember and what</b>	14 <b>suicide assessment, is performed by a trained</b>
15 <b>I'm not sure of, was John Bosch a site person</b>	15 <b>correctional officer, not by health care staff.</b>
16 <b>or a CCS person. If he's a CCS person, then I</b>	16 Q And I appreciate that, but is there anything in
17 <b>don't know if it's specific to Brown County.</b>	17 the CCS policy, Exhibit 46, or the contract
18 <b>If John Bosch is a Brown County person, then</b>	18 between CCS and Brown County that allows a jail
19 <b>yes, it has been made specific to Brown County.</b>	19 staff person to perform the suicide screening?
20 <b>And I don't know the answer to that question.</b>	20 MS. SCHNEIDER: I'm just going to
21 Q Okay. Leaving that aside, the suicide	21 object, form and foundation.
22 prevention program has a number of components,	22 <b>THE WITNESS: The answer is I don't</b>
23 correct?	23 <b>know. I do not know. I haven't reviewed the</b>
24 A <b>That is correct.</b>	24 <b>contract or the policy in that detail recently</b>
25 Q And at 3.3 the CCS policy requires staff to	25 <b>to be able to give you an answer. I'm sorry.</b>
Page 224	Page 225
1 BY MR. GAHNZ:	1 electronic monitoring?
2 Q Okay. That's fair enough.	2 MR. SALEMI: Object to the form;
3 Do you see under 3.8, Nonacutely	3 presumes an incomplete hypothetical.
4 Suicidal Inmate? We talked about that	4 MS. SCHNEIDER: Join.
5 definition before, correct?	5 <b>THE WITNESS: Well, presuming --</b>
6 A <b>We did. And I said that I did not believe that</b>	6 <b>presuming that that is bad news for a moment --</b>
7 <b>applied to Ms. Freiwald.</b>	7 <b>me -- I'm sorry, I'm telling you back a</b>
8 Q Right. Because you thought that it wasn't	8 <b>hypothetical.</b>
9 recent?	9 <b>But if you presume that is bad news,</b>
10 A <b>And she was not expressing current suicidal</b>	10 <b>there's no information in the record that</b>
11 <b>ideation.</b>	11 <b>indicates that anybody at the Brown County Jail</b>
12 Q Okay. So a little bit farther back in this	12 <b>or CCS staff or Dr. Fatoki knew that, knew that</b>
13 policy one of the things -- at page CCS83.	13 <b>she had -- that she was expecting to go home</b>
14 A <b>Okay.</b>	14 <b>after one night or received bad news that she</b>
15 Q One of the things that is done is that the --	15 <b>was going to have to stay. As far as the</b>
16 there is to be training that zero to seven days	16 <b>information in the record only suggested that</b>
17 after admission is a high risk period, correct,	17 <b>she was sentenced to 45 days. All of that</b>
18 for suicides?	18 <b>other information came out from other people</b>
19 A <b>That is listed as one of the high risk periods</b>	19 <b>and after the fact.</b>
20 <b>in 5.1.2.</b>	20 BY MR. GAHNZ:
21 Q And another one is that -- after the receipt of	21 Q Elsewhere in your report you're indicating that
22 bad news.	22 the triggering event was more likely the fact
23 Would you consider in this case the	23 that she had learned that she wasn't going to
24 receipt of bad news that Ms. Freiwald is going	24 get out of jail; is that correct?
25 to have to stay in jail and not get the	25 A <b>That is correct.</b>

Page 226		Page 227
1 Q All right. So would you consider based on your report that this was bad news that Ms. Freiwald had received?	1 Did Ms. Freiwald have a history of suicide attempt?	
4 A I didn't characterize it one way or the other. But as I said, if you presume it is bad news, I don't see any evidence that anybody else at the Brown County Jail or CCS or Dr. Fatoki knew about that.	3 A She did have that, but not while incarcerated.	
9 Q Well, do people normally commit suicide after receiving good news?	4 Q Under 5.2.1 it provides that "Potential suicide risk is initially evaluated through observation and interview questions during the receiving screening."	
11 MS. SCHNEIDER: Object to the form.	8 Did anybody at CCS do that?	
12 MR. SALEMI: It sounds argumentative, and it's an incomplete hypothetical.	9 A She had a thorough suicide screening.	
15 THE WITNESS: I don't know how to provide an answer to that.	10 Q Did anybody at CCS do that screening?	
17 BY MR. GAHNZ:	11 A I believe it was performed by the trained correctional officers.	
18 Q All right. Another high risk is "inmates with mental illness, including depression or bipolar disorder."	13 Q Did anybody at CCS review that screening at any point during her incarceration?	
21 Did Ms. Freiwald have depression?	15 A So it was my understanding that the nurse only received the receiving screening after Ms. Freiwald had been transferred to the Huber center. And so the -- I believe that all of the nurses testified that they did not review those receiving screenings typically that were -- I'm sorry, not the receiving screenings -- the suicide screenings that were done.	
22 A She did.	24 Q Right. The receiving screening is a different document than the suicide screening?	
23 Q Okay. "Inmates who have a personal history of suicide attempts, especially when those have occurred while incarcerated."		
Page 228		Page 229
1 A That's correct. They're two different documents. So I misspoke.	1 at suicide risk.	
2 Q That's okay.	2 Q So who other than the form -- well, back up. The -- did anybody evaluate the	
4 A The nurses -- the nurses said that they did not review the suicide screening of the -- that were done by the correctional officer.	4 suicide risk evaluation to determine whether or not Ms. Freiwald was a suicide risk?	
7 Q At 5.41 they talk about evaluation and treatment, correct?	6 A I believe the trained correctional officer did.	
9 A That's correct.	7 Q Anybody -- but nobody from CCS, correct?	
10 Q What is a QMHP?	8 A I'm not aware of it if they did.	
11 A Qualified mental health professional.	9 Q And the -- at least based on the information in the offender management system, she was identified as a potential suicide?	
12 Q And that person is to determine the level of suicide risk and level of supervision needed; is that correct?	12 MS. DOYLE: I'm going to object to form.	
15 A Well, not for every inmate. I mean, this is -- this is one step in a process. So one would have to identify a risk of suicide such that some process would have been started. So, no, a QMHP does not see every inmate.	13 MR. SALEMI: Yeah, object to form. Misstates the evidence.	
20 Q And in Ms. Freiwald's case she was identified as a suicide potential, correct?	14 MS. SCHNEIDER: Join.	
22 A I don't believe that is the case. I believe -- I believe that's what the form -- the computer said that, but I don't believe that -- based on the responses that she provided, that she was	15 MS. DOYLE: I'll join that too.	
	18 THE WITNESS: So I believe the answers that she provided did not show that she was at risk for suicide. I understand that the computer generated that wording at the top, but I don't believe that was generated by a person.	
	23 BY MR. GAHNZ:	
	24 Q Okay. You were not there to say, "Brown County, based on these answers, Ruth Freiwald	

	Page 230		Page 231
1	is not a suicide risk." Fair enough?	1	<b>A That's correct.</b>
2	<b>A I only reviewed her responses in hindsight.</b>	2	Q "Documented suicide attempt within the prior 12
3	Q And the only information that was out there was	3	months."
4	what the computer had said with respect to the	4	That was, in fact, Ms. Freiwald,
5	risk of suicide based on the answers to the	5	correct?
6	questions, correct?	6	<b>A She did meet that criteria, yes.</b>
7	<b>A No. I mean, I disagree with that. What</b>	7	Q Okay. And was anything done by any employee of
8	<b>information was out there was what Ms. Freiwald</b>	8	CCS with respect to the fact that Ms. Freiwald
9	<b>said in response to the questions.</b>	9	was a high risk for suicide based on their
10	Q Okay. At page 87 of that same standard -- CCS	10	policies?
11	policy, do you see under 5.63 at the -- at the	11	MR. SALEMI: Hold on. Could you
12	bottom of the page the listing of who is	12	read that one again, please?
13	considered a high risk patient? It starts the	13	(Last question read.)
14	last sentence there, "High risk patients	14	MR. SALEMI: Object to form.
15	include," colon?	15	MS. SCHNEIDER: Join.
16	<b>A Yes.</b>	16	MR. SALEMI: Assumes facts not in
17	Q Okay. And so "Admitted to jail on suicide	17	evidence.
18	watch directly from an inpatient psychiatric	18	<b>THE WITNESS: I'm sorry, I need to</b>
19	unit or inpatient medical stay due to suicide	19	<b>review a document.</b>
20	attempt in the community."	20	BY MR. GAHNZ:
21	That was not Ms. Freiwald, correct?	21	Q That's okay.
22	<b>A That is correct.</b>	22	<b>A What I was reviewing just now was HRVACCS3.</b>
23	Q "Placed on suicide watch due to making a	23	Q Which -- what's the title of that document?
24	suicide attempt in jail."	24	<b>A Booking Observation Report. The medical</b>
25	That was not Ms. Freiwald, correct?	25	<b>screening.</b>
	Page 232		Page 233
1	Q Okay.	1	<b>A She was.</b>
2	<b>A The medical screening -- just one moment,</b>	2	Q Under 3.8.
3	<b>please. I wanted to see -- it has no mention</b>	3	<b>A This is still on this Exhibit 46?</b>
4	<b>of her prior suicide attempt. So, in other</b>	4	Q Right. Page 82.
5	<b>words, it's not in that document.</b>	5	<b>A Okay. Okay. You said 3 point which?</b>
6	Q Sure.	6	Q 3.8.
7	<b>A It was only in response to the questions on the</b>	7	<b>A 8. Okay.</b>
8	<b>suicide screening.</b>	8	Q Nonacutely Suicidal Inmates, which is, in
9	Q Okay.	9	parenthetical, individuals who express current
10	<b>A And I'm not aware that any CCS employee was</b>	10	suicidal ideation without a specific threat or
11	<b>aware of the answers to that. That was -- that</b>	11	plan, have a recent history of self-destructive
12	<b>was taken by and acted on by the correctional</b>	12	behavior, or deny suicidal ideation but
13	<b>officer.</b>	13	demonstrate other concerning behavior
14	Q Fair enough. But based on the -- on the policy	14	indicating the potential for self-injury, are
15	that CCS had in place, you would agree that	15	placed on watch and monitored on a staggered
16	Ms. Freiwald was considered a high risk for	16	schedule with no more than 15 minutes between
17	suicide?	17	checks.
18	<b>A I agree that she met one of those criteria on</b>	18	Did that -- was that the policy that
19	<b>that. I don't necessarily agree that she</b>	19	Brown County had in place with respect to
20	<b>was -- met the cri -- that she was a high risk</b>	20	nonacutely suicidal inmates?
21	<b>for suicide. And she was not even at that</b>	21	<b>A I believe that it is.</b>
22	<b>facility. She had been transferred to another</b>	22	Q And was that done on -- for Ms. Freiwald?
23	<b>facility.</b>	23	<b>A No, I don't believe Ms. Freiwald met that</b>
24	Q She was still in the custody of Brown County,	24	<b>criteria, that definition there, and I don't</b>
25	correct?	25	<b>believe that it either was done or should have</b>

Page 234	Page 235
1 <b>been done.</b>	1 <b>A I'm going to go over to it.</b>
2   Q   Okay. Even though based on CCS policy, she was	2 <b>My read -- it's on 87, at the bottom</b>
3    a high risk of suicide because she had	3 <b>of 87 and at the top of 88. "High risk</b>
4    attempted a suicide within the 12 months prior	4 <b>patients include," and then it has certain --</b>
5    to her incarceration?	5 <b>it has five bullets. Four of them do not</b>
6            MS. SCHNEIDER: Object to the form.	6 <b>apply. One of them, documented suicide attempt</b>
7    It misstates his prior testimony.	7 <b>in the prior 12 months, does apply in her case</b>
8            MR. SALEMI: I join.	8 <b>in hindsight. I don't agree that either CCS --</b>
9 <b>THE WITNESS: That's your</b>	9 <b>that any of the employees knew that or that she</b>
10 <b>characterization of it. I said that she met</b>	10 <b>was or should have been put in that category</b>
11 <b>one criteria. I did not agree that she was at</b>	11 <b>even had they known that. It says include. It</b>
12 <b>high risk of suicide.</b>	12 <b>doesn't say must. That's just examples.</b>
13   BY MR. GAHNZ:	13   Q   Okay. Based on CCS Policy No. OPS-100-G05, did
14   Q   Well, my question wasn't whether you thought	14   Ms. Freiwald meet the definition of a high risk
15    she was at high risk of suicide.	15   for suicide inmate?
16   A <b>Okay --</b>	16            MR. SALEMI: Object to form.
17   Q   My question was, did she meet the definition	17 <b>THE WITNESS: I don't believe so.</b>
18    set forth by CCS as a high risk for suicide?	18 <b>This is not giving a definition. It just</b>
19            MR. SALEMI: Object to form. That	19 <b>says -- giving examples of who could be high</b>
20    wasn't the question.	20 <b>risk patients. So I don't believe she was high</b>
21            MS. SCHNEIDER: Join.	21 <b>risk. And she met one criteria, and that</b>
22   BY MR. GAHNZ:	22 <b>criteria the CCS employees didn't know anything</b>
23   Q   Well, that is the question now.	23 <b>about, so no, I don't believe that that</b>
24            Can you answer that question, sir?	24 <b>qualifies her as a high risk patient.</b>
25            And, again, it's at --	25            MR. GAHNZ: All right. We're done
1   unless somebody else has more questions.	1   MS. SCHNEIDER: Okay. Thank you.
2            MS. SCHNEIDER: I just have one	2   THE VIDEOGRAPHER: This is the end
3   clarification.	3   of today's deposition of Dr. Thomas Fowlkes.
4 <b>EXAMINATION</b>	4   We are off the record at 3:42 p.m. This is the
5   BY MS. SCHNEIDER:	5   end of disc number four.
6   Q   Doctor, you were asked a lot of questions about	6   MR. GAHNZ: We're going to copy 203
7   Exhibit 209, which was your affidavit in the	7   and provide you with a copy to add to the
8   Mixon case. Were the -- can you tell us	8   original. Exhibits 204 and 205 which were
9   whether or not the circumstances in the Mixon	9   contained within Exhibit 203 have been taken
10   case were similar to the circumstances in the	10   out and marked separately for ease of reference
11   Freiwald case?	11   down the line. Those will be copied as
12   A <b>No. They're entirely different.</b>	12   Exhibits 204 and 205 and not included in 203.
13   Q   And did you adequately summarize the	13   Maria is going to take control of
14   differences between that case and this case	14   Exhibit 203 and return it to Dr. Fowlkes after
15   earlier in your deposition, or is there	15   copying.
16   something you would like to add to that?	16            Is that correct, everybody?
17   A <b>Well, I think I did summarize it, but I will</b>	17            MS. SCHNEIDER: That's correct. And
18 <b>say that they were entirely different in that,</b>	18   the rest of the exhibits will go with the court
19 <b>number one, that jail had no medical staff at</b>	19   reporter.
20 <b>all. And Ms. Mixon was very sick with opiate</b>	20 <b>THE WITNESS: Yes. And I have one</b>
21 <b>withdrawal including severe vomiting and</b>	21 <b>more comment on the record. What about reading</b>
22 <b>diarrhea for a number of days before she</b>	22 <b>and signing?</b>
23 <b>suddenly died of a seizure. So I think those</b>	23            MR. GAHNZ: That's not a Wisconsin
24 <b>are entirely different circumstances than this</b>	24   thing.
25 <b>case.</b>	25            (Discussion off the record.)

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1 STATE OF WISCONSIN )

) SS:

2 COUNTY OF MILWAUKEE )

3

4 I, Sarah A. Hart, RPR, RMR, CRR and  
5 Notary Public in and for the State of  
6 Wisconsin, do hereby certify that the preceding  
7 deposition was recorded by me and reduced to  
8 writing under my personal direction.

9 I further certify that I am not a  
10 relative or employee or attorney or counsel of  
11 any of the parties, or a relative or employee  
12 of such attorney or counsel, or financially  
13 interested directly or indirectly in this  
14 action.

15 In witness whereof, I have hereunder  
16 set my hand and affixed my seal of office on  
17 this 31st day of January, 2020.

18

19

20

21

22 SARAH A. HART, RPR/RMR/CRR

23 Notary Public

24 In and for the State of Wisconsin

25 My commission expires October 9, 2023.